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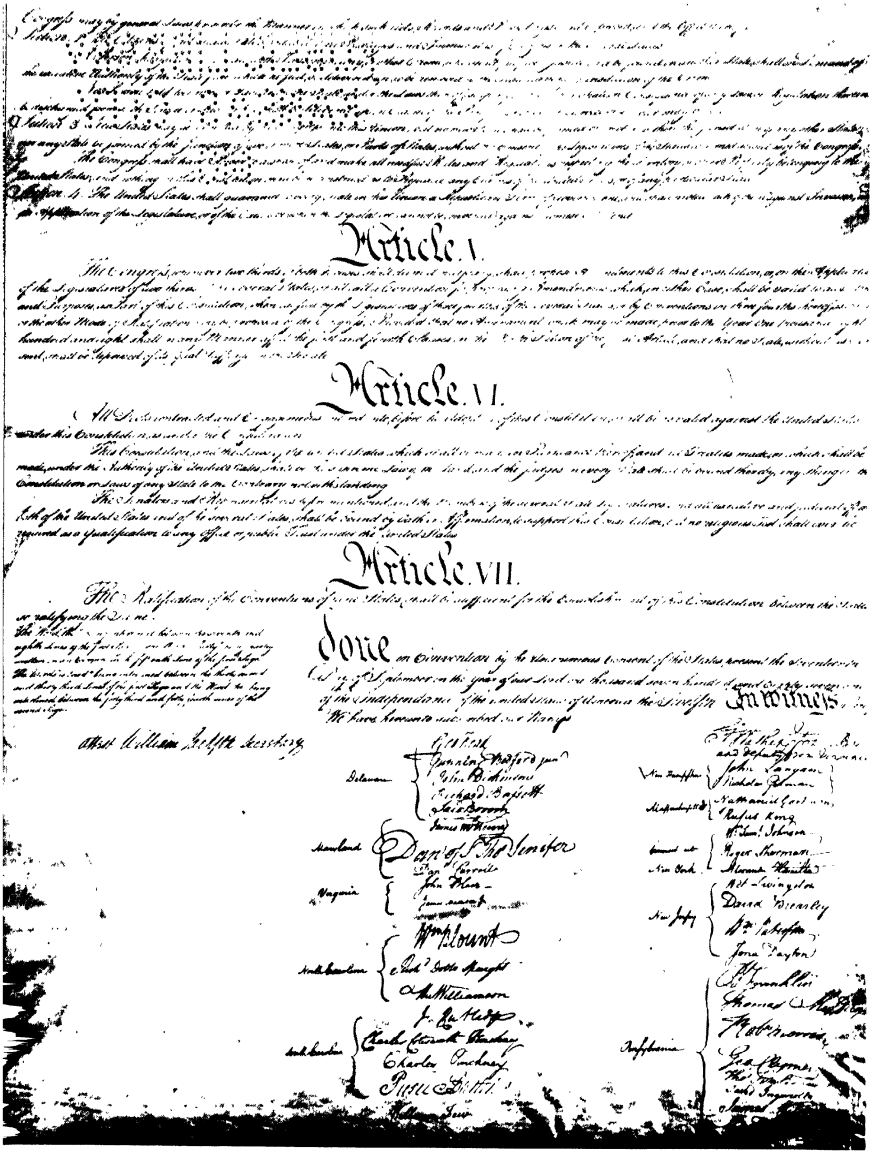
CHURCH AND STATE IN THE UNITED STATES

Historical Development and Contemporary Problems of Religious Freedom under the Constitution



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This includes the closing portion of Article VI, that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States" —the foundation stone on which our religious freedom and Church-State separation have been built. The provision for "Oath or Affirmation" was a concession to Quakers and other groups. Note dating "in the Year of our Lord." See VIII, 1.

CHURCH AND STATE IN THE UNITED STATES

VOLUME I

A Historical Survey, Source Book, and Interpretation of Documents and Events Showing the Growth of Religious Freedom under the Friendly Constitutional Separation of Church and State, and the Resulting Influence of Religion in All Major Phases of National Development; also a Study of the Status of Churches including Synagogues and Other Religious Groups under Federal and State Constitutions, Statutes, and Judicial Decisions; Authoritative Opinions of Courts, Church Bodies, Statesmen, Religious Leaders, and Publicists on Matters at Issue; and a Discussion of Contemporary Problems of Adjustment

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IN THREE VOLUMES
ILLUSTRATED

HARPER & BROTHERS
Publishers *New York*

CHURCH AND STATE IN THE UNITED STATES

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FIRST EDITION

D–Z

TO
THE BISHOP, DEAN, AND CHAPTER
OF WASHINGTON CATHEDRAL

A WITNESS TO THE IDEAL
OF THE CHRISTIAN CHURCH
AT THE CAPITAL OF THE NATION

IN RECOGNITION OF FIFTEEN
YEARS OF DELIGHTFUL ASSOCIATION

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NOTE. These illustrations represent in the main six different types of subjects identified with religious freedom and Church–State separation: leaders in the cause; title pages of important books; monuments; historic buildings; cartoons; autographed documents and letters. They are chosen, as far as possible, from sources contemporary with the events described. Provenance is indicated in an acknowledgment at the bottom of each picture. The most frequent sources are the Frick Art Reference Library, Library of Congress, National Archives, New York Public Library, Uni-

versity of Virginia Library, and Yale University Library. Many photographic studios have also aided, especially Religious News Service of New York.

Outside of the basic documents and the portraits of a few of the great leaders such as Jefferson and Madison, the illustrations may be considered as merely representative of hundreds that might have been chosen. Every chapter and section could be easily further illustrated. For example, our coins with "In God we trust," and our dollar bills with the "great seal" of the United States showing the Deity in the form of the "Divine eye" approving our national undertaking, indicate the American tradition of the bearing of religion on government. Because of lack of space I have also left out many appropriate illustrations including portraits of such leaders in the cause of religious freedom as the Baptist Reverend Isaac Backus (1724–1806) and Archbishop John Ireland (1838-1918); the well-known engraving of the Reverend Jacob Duché (1737–98) making prayer at the opening of the first Continental Congress; L'Enfant's place in his plan of the Capital for a "Church for National Purposes"; the statue of religious liberty by Moses Ezekiel in Fairmount Park, Philadelphia; the West Point chapel erected by the government; the "Apostolic Delegation" in Washington; a president taking his oath of office on the Bible; a picture of the Scopes evolution trial in Tennessee; a city spot map showing church property exempt from taxation; etc., etc. The subject would be almost inexhaustible for anyone interested in extra illustrating.

The student or teacher who wishes to pursue the matter further is referred to such books as the *A. L. A. Portrait Index*, 1906, for sources of portraits; and the *Historical American Buildings Survey Catalog of the Measured Drawings . . .* , 1941, for similar information about historic buildings. Attention is called to various recent compilations showing pictures illustrating American development, such as the *Album of American History*, James Truslow Adams, Editor-in-Chief, 5 volumes, with complete index, 1944–49.

Reference may also be made to such well-illustrated volumes on American history as: Elroy McKendree Avery, *History of the United States and Its People*, 12 volumes, 1904–10; Justin Winsor, *Narrative and Critical History of America*, 8 volumes, 1889; Luther A. Weigle, *American Idealism* in "The Pageant of America" series, 1928. Of the illustrated periodicals the most valuable over a long period is *Harper's Weekly*, 1857–1916. For pictures of current events in the Church–State field the Religious News Service, New York, keeps an extensive collection.

Among the many notable collections of engravings and prints of American scenes, events, and personalities dealing much with religious subjects are those of the American Antiquarian Society of Worcester, Massachusetts, the New–York Historical Society, the New York Public Library, the Library of Congress, and the Huntington Library. The National Catholic Welfare Conference and other Church headquarters have collected illustrative material of value.

INTRODUCTION

THE DEVELOPMENTS and catastrophes of the turbulent twentieth century have brought the American people to a position of unprecedented power and responsibility. Victory in war has not been followed by that sense of security that the completeness of the military victory seemed to foreshadow. The effort to achieve an organized world has faltered in the face of a determined and aggressive nationalism. European philosophies hostile to democracy expressing themselves in totalitarian states have challenged that principle of liberty that has made possible the progress of science and the arts in Western civilization. In an age in which ideas have become recognized as weapons more powerful than machine guns Americans have increasingly turned to a study of their own traditions in the hope of achieving a better understanding of their own institutions and of the system of values on which they rest. The present study, focusing on the ancient yet still vital problem of the relation of Church and State, is in part such a historical exploration of American ideas and ideals.

Religion has from the beginning been an element of prime importance in our history. Our colonial beginnings fell in a period when religious institutions were tied to the political state by the closest bonds. In six of the colonies the Established Church of England took its place in the life of the people as naturally as the British practice of representative government. Three other colonies, though settled by men and women who disapproved of many of the beliefs and practices of Anglicanism, held fast to the idea of a close Church–State relationship. A small but rapidly growing radical minority advocated the separation of the two great institutions. In spite of these radicals, however, the practice of close association between political and ecclesiastical organizations continued to be the custom in American civilization for nearly half our history. But the practice, so deeply imbedded in European tradition, did not fit American conditions. By the beginning of the nineteenth century, the United States, first among the nations of the world, had established the principle of religious liberty and the complete separation of Church and State.

The eighteenth century founders of American religious liberty thought in terms of a state whose functions were limited primarily to the maintenance

of order at home and defense against enemies abroad. They insisted that churches should be voluntary and private organizations living with other social institutions under the protection of government. In such a situation the churches in addition to being centers of worship paid close attention to the family, to education, and to the relief of suffering. Scores of colleges and universities throughout the country have their origins in the desire of one or another religious group to bring enlightenment as well as faith to frontier communities. The religious impulse was strong in the humanitarian crusades that reached their climax in the movement to free the slaves. The twentieth century has seen the political state in America, as well as in other nations, accumulate great power and extend its functions over vast new social areas. In spite of the persistence of strong private schools, colleges, and universities, the tax-supported educational institution has become predominant. Americans justly look upon their public schools as among their greatest achievements. The twentieth-century State, closely allied to public education, has created a changed environment for our inherited religious institutions. The preservation of religious liberty has been a continuing problem. The relations between the State, conceived in new terms, and the Churches have become increasingly complex. They have an importance too often overlooked.

Dr. Stokes does not limit his study to the historical narrative that begins with the establishment of the Church of England at Jamestown and the adventures of a band of Separatists at Plymouth. He has undertaken also a timely and thorough investigation of the problems in Church–State relationships that confront the present generation. His is a pioneer enterprise. He looks out over our national scene from more than one point of vantage. Three aspects of his experience have brought him into intimate contact with the questions and developments that are considered in the present volumes. As president of the Phelps-Stokes Fund, and as a member for many years of national boards and committees such as the Rockefeller Foundation, the Brookings Institution, the General Education Board, and the Commission on the Church and Minority Peoples of the Federal Council of Churches, he has dealt directly with some of the great social problems of the nation. For many years as Secretary of Yale University he observed and participated in the interrelations of religion and education. As canon of Washington Cathedral he came into close contact through the work of local and national committees with leaders both in Church and State—the former including Protestant, Catholic, and Jewish living in the nation's capital or brought there for various conferences; the latter including many of the most representative men in the government over a long period; and has learned from them many facts and points of view regarding matters discussed in this study. Dr. Stokes does not deal for the first time in

these volumes with the problems of history. For a long period of his life he has engaged in historical research. He has dealt with the subject in hand guided by the historian's ideal of objectivity and the desire to uncover all pertinent material. The present work makes a significant contribution to the discussion of some of the most important problems of our day.

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NOTE ON THE PLAN OF ARRANGEMENT

THE READER will notice that this study is divided into two "books." The first is called *Foundations and Historic Adjustments through the Civil War,* the second, *Modern and Contemporary Problems and Their Solution.* The latter also contains a bibliography, table of dates (including important dates, both early and recent, in the history of Church–State relations in other countries), appendices, and index. The division between these two "books" is near the middle of Volume II.

There is, of course, some interpretative material added to the history in Book I, and in Book II some earlier historic material needed for the understanding of specific modern problems as well as to bring up to date certain movements whose foundations were laid in the early days of the republic. It has been impossible to make always a hard and fast line of demarcation, but in general the division holds. The author believes that a wise solution of the various contemporary problems of Church-State adjustment cannot be reached without knowledge of the historic background; and that this is of only relatively minor importance unless it leads up to, and aids, a wise solution of the problems of religious freedom and Church–State relations which now face our country. Therefore a reasonably comprehensive treatment of the subject involves a study of both the past and the present.

There are three volumes, the division points being at the close of Chapters XIII and XIX. It was originally planned to have two volumes corresponding to the two "books," but the large addition of material needed to bring the volumes up through November, 1949, so as to include postwar adjustments required three.

The author's general conclusions as to the major factors in the American solution of Church–State problems, its relation to world problems in this time of crisis, as well as the connection between religious freedom and other human rights, will be found in Part Eight, especially the epilogue, chapter XXVII.

The illustrations have been chosen mainly from sources contemporary with the events recorded, and should aid in showing the progress of religious free-

dom in this country and the type of contacts which have arisen between the Church and the State under the American plan of Constitutional separation.

The reference notes have been placed at the end of each volume. In this way the reader will be able to trace easily the sources of references, without being embarrassed by notes in the text. Special attention has been given to cross references. These, with the extensive table of contents and full index, should make it easy to find any matter of history, law, theory, or practice discussed.

In general, the full title of a book is given where it is first referred to; afterward the reference is in abbreviated form, the title, date, place of publication, brief analysis, and critique of all books frequently referred to being given under the author's name in the bibliography (Chap. XXVIII).

After much consideration and many attempts at organizing the bibliography, I have arranged it in a simple alphabetical list under authors, adding, however, as described in the introduction to the bibliography, a symbol after each entry to explain its special classification.

The appendices contain documents of historical or illustrative value which are too long for inclusion in the text.

FOUNDATION STONES

(1) *FUNDAMENTAL LAWS OF THE LAND AFFECTING RELIGIOUS FREEDOM*

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain *unalienable Rights,* that among these are Life, Liberty and the pursuit of Happiness.—Declaration of Independence, 1776

. . . No religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.—Constitution of the United States, 1787

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory . . .

It is hereby ordained and declared, . . . that the following articles shall be considered as articles of compact between the original States and the people and the States in said territory, and forever remain unalterable, unless by common consent, to wit:

Article I. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory. . . .

Article III. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. . . .

Article V. . . . The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles. . . .—Ordinance passed by Continental Congress for the government of the Northwest Territory, 1787

Congress shall make no law respecting an establishment of religion, or pro-

hibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.—Bill of Rights (Amendment I of Constitution), 1789; ratified 1791

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. —Amendment XIV of Constitution, 1866; ratified, 1868

(2) *FUNDAMENTAL PRINCIPLES OF THE AMERICAN WAY OF LIFE*

Proclaim Liberty throughout the Land unto all the inhabitants thereof.—Leviticus, 25.10 (inscribed on the Liberty Bell in 1853)

And when they were come, they say unto him, Master, we know that thou art true, and carest for no man: for thou regardest not the person of men, but teachest the way of God in truth: Is it lawful to give tribute to Caesar, or not? . . . And Jesus answering said unto them, Render to Caesar the things that are Caesar's, and to God the things that are God's. And they marvelled at him.—St. Mark's Gospel, 12.14,17

And ye shall know the truth, and the truth shall make you free.—St. John's Gospel, 8.32

That the Church of England shall be free, and enjoy her whole rights and liberties inviolate.—Magna Charta, 1215

In the Name of God, Amen. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King *James*, by the Grace of God, of *Great Britain, France,* and *Ireland, King*, Defender of the Faith, &c. Having undertaken for the Glory of God, and Advancement of the Christain Faith, and the Honour of our King and Country, a Voyage to plant the first colony in the northern Parts of Virginia; Do by these presents, solemnly and mutually in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid; And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Offices, from time to time, as shall be thought most meet and convenient for

the general Good of the Colony; unto which we promise all due Submission and Obedience. . . .—The Mayflower Compact, 1620

. . . It is the duty of nations as well as of men to own their dependence upon the overruling power of God; to confess their sins and transgressions in humble sorrow, yet with assured hope that genuine repentance will lead to mercy and pardon; and to recognize the sublime truth, announced in the Holy Scriptures and proved by all history, that those nations only are blessed whose God is the Lord.—Abraham Lincoln, preamble of proclamation appointing March 30, 1863, a day of humiliation, fasting, and prayer

. . . That we here highly resolve that . . . this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people, shall not perish from the earth.—Abraham Lincoln, "Gettysburg Address," November 19, 1863

God reigns, and the Government at Washington still lives.—James A. Garfield, on hearing of the death of President Lincoln

The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.—U. S. Supreme Court, case of *Watson* v. *Jones,* December Term, 1871

There is not a country in the world where Frederick the Great's principle, that everyone should be allowed to go to Heaven his own way, is so fully applied.—James Bryce, *The American Commonwealth*

In this happy country of ours religion and liberty are natural allies.—Theodore Roosevelt

PREFACE

DURING the past quarter century scholars have added greatly to our understanding of American history by studying various social aspects of it to counteract the effect of earlier histories of national development which dealt mainly with political and military features and emphasized the influence of a few outstanding leaders. We have recently had histories of American art, business, invention, expansion, financial policy, transportation, international relations, social life, immigration, sectionalism, science, race relations (including Negro history), social welfare, education, labor, Constitutional problems, and other features of national development. These are vertical rather than horizontal studies of history, and are a good supplement and corrective of the chronological-political histories of the past. They enable us to understand various social factors in national life. We have also had our history synthesized from the points of view of the ever-changing Western "frontier," of the conflict between the interests of agriculture (country life) and industry (town life), of Federal and state administration, and so on. In all this the Churches, as such, have not been overlooked. The history of religions in America, of Christianity, of each of the major denominations, of the conflict between Protestant and Catholic, of the part played by the Churches in developing high ethical standards and in founding schools and colleges, has been treated by competent historians. But there is at least one phase which has been almost overlooked or not sufficiently emphasized and documented as a factor of national importance: the contacts since the American Revolution, both in discussion and action, between Church and State—sometimes friendly, sometimes strained—from which our religious freedom has emerged. Many scholars, to whose monographs I am in debt, have dealt with special fields, such as the "Protestant Crusade" of the middle of the last century, or the building up of the Roman Catholic parochial schools, or the struggle for religious liberty by Jews and Catholics in certain states. But no one has before attempted in a comprehensive way to write the history of religious freedom in the United States, or to bring together all the leading historic facts and incidents in the relations between Church and State, which have been those of friendly separa-

tion. Similarly, a comprehensive survey of points of friction in our nation today, with adequate quotations from existing laws and relevant court decisions, and the authoritative utterances on both sides of the questions involved, is almost as great a desideratum. The useful attempts made heretofore to meet this second need have generally suffered in interpretation from the lack of historical background which these volumes try to supply. The relations between Church and State in the United States in the century and a half since the formation of our government have not played as great a part in our history as in that of the Middle Ages or of some modern continental countries. They do not provide the major theme or framework; but they have been far more important in the long story of the interrelation between religion and society than is generally realized.

Furthermore, the pattern evolved under the Constitutional guarantees of religious freedom has not only worked well in this country but has served as an example to the rest of the world, showing that liberty of conscience, based on the complete organic separation of the two historic "powers," has contributed to the good of both; and yet there are relatively few in America and abroad who fully realize how important America's contribution in this field has been, or who know how it has developed. Even so distinguished a British historian as John B. Bury, in his well-known *A History of Freedom of Thought* (1912), though referring to Roger Williams, has not a mention of the epoch-making work of Thomas Jefferson and James Madison, who were mainly responsible for our Constitutional religious freedom in this country!

Some critics, on first looking over the table of contents, may feel that I have recounted only more or less connected events in the history of Church and State in America, rather than written a well co-ordinated consecutive narrative. This may be partly true, but, as a study of the volumes will, I hope, make evident, I have tried to show the connection between the various events and to indicate the general progress in the movement for religious freedom. In general a roughly chronological plan is followed in the arrangement of chapters and sections, but this is at times departed from in the interest of grouping closely related topics. It has been part of my definite purpose to give the material in such form that it can be used for "case study." Just as court decisions are the basis of legal study in modern law schools, so, if we are to develop a wise policy in matters at issue, we must know something about the major instances of friction and co-operation in the past and today between the two leading institutional factors in national development—Church and State. These I have tried to record, giving the arguments on both sides when there is any large difference of opinion, as well as an interpretation of their significance. It is worth noting, however, that, though the opinions of our most enlightened

political and religious leaders have frequently differed among themselves, occasionally forming opposing groups regarding the application of the principle of religious freedom in concrete historical cases, there has been virtual unanimity of opinion among them on the need of maintaining unimpaired our Constitutional inheritance of freedom in matters religious and ecclesiastical. Indeed, it is hoped that the opinions on this subject here brought together from many sources in connection with events in American history—some of them important at the time but now almost forgotten—may prove an arsenal that may be largely drawn upon by Protestant, Catholic, Jewish, and other writers alike, in defending and applying to current and future problems those principles of religious liberty embodied in the Constitution and its Bill of Rights. The world struggle against totalitarianism in which we are still engaged, and the realization that religious freedom is essential to all other freedoms, make it important to undertake the task. It is unfortunate, as Merle Curti points out in the introduction to his distinguished work *The Growth of American Thought,* that we are virtually without any history of the idea of liberty in the United States. This book may make a small contribution toward meeting this need, but it is, of course, restricted to the field of religious liberty.

I realize that any work of this kind must have its limitations and mistakes, because it covers so many special fields, both historical and contemporary. To do the work in the best manner a man should be an American political and social historian; a Church historian with full knowledge of the legislation and life of each of the great American religious bodies—Protestant, Jewish, and Catholic; a Constitutional lawyer able to interpret authoritatively all the great Church-State issues which have come before the Supreme Court and the leading state courts; an authority on social reform, with a broad knowledge of the moral issues which have arisen in each generation and the ways in which they have been met; a social philosopher able to interpret the significance of movements and to show their interrelation; and a man of letters able to put all the accumulated facts and views in the most readable form. The author suspects that there is no one in the United States who could call himself an authority in more than two, or at the most three, of these fields, and his claims as to his own qualifications would be much more modest, especially in the legal field.

These volumes are not to be considered as a legal or Constitutional treatise on the subjects covered. Their purpose is mainly historical, factual, and interpretative, referring to constitutions, laws, and judicial decisions only as these are necessary to show the attitude and legislation of the State in matters affecting the Churches and religious freedom.

They have been written not primarily from the standpoint of religious or Church connections on the one hand, or from that of legal or Constitutional

requirements on the other. They include all these aspects, and of course the Constitutional foundations are basic, but the author has wished from first to last to make a contribution to the history of culture in this country with special reference to our Church–State relations. He has felt that such a task is supremely worth undertaking, especially at a time of real crisis, when our views must be formulated so as to avoid the mistakes into which some of the nations of Europe have fallen, and possibly to help them in their reconstruction. He hopes that his preliminary labors may at least lay the foundations for the next decade or so, and then provide the basis of more adequate studies. He has tried to state facts fairly, and to avoid errors by using authoritative sources and by having specialized sections read by competent experts.

The fact that the author has referred more to religious factors in American life than to economic, political, scientific, and other factors, should not be misunderstood. As the religious factors, and especially the impact of the Church on public policy, have been relatively so little stressed by most modern historians, it seemed well to attempt a full-length picture of the history of religious freedom in this country, and of its resulting influences in all the periods and in all the major crises and events in our national history. Consequently, in the discussions of slavery, or the expansion of the West, or the education of Indian tribes, or temperance reform, or any one of scores of other topics treated, it should be remembered that the picture given may be considered somewhat one-sided unless this limitation of scope is borne clearly in mind. It seems perfectly right that there should be histories of the United States in which, for instance, the effect of invention, or immigration, or climate, or race, or economics, should be signaled out for special attention, as long as the facts are based on authoritative sources and the conclusions fairly drawn. I have had this same thought in mind in connection with Church–State relations based on Constitutional separation. These do not constitute the major thread in American history, but they have been and are of great importance; and the development of these United States cannot be understood if they are omitted or treated inadequately or unsympathetically.

I have written these volumes with the conviction that whereas Federal and state constitutional provisions are fundamental, of almost equal importance are the acts of Congress and state legislatures, the decisions of courts, the acts and utterances of presidents, governors, and other high officials, and the rulings of various important government offices. In pursuit of this material to illustrate the results of what might be called friendly or co-operative Church–State separation in the United States, I have followed not only the main streams of American history but also many bypaths that have led to significant incidents. Some of these have been recorded heretofore only in little known books

or pamphlets. These incidents show the actual working out historically of the principles which the Federal and state constitutions affirm on the subject of Church–State separation and religious freedom. They provide a fairly uniform and illuminating pattern of observance on the higher levels of the ideals of the Founding Fathers. As a result, new problems which have arisen have necessitated new laws and new interpretations to protect religious freedom. There has also been the inevitable ebb and flow of interest in the general subject of Church–State separation, but at present it is at its height, and there is a widespread determination that the forward steps embodied in our Constitution and Bill of Rights due to Madison, Jefferson, and their colleagues, shall be preserved unimpaired.

The task of preparing these volumes has not been easy. It has included many labors, of which these seem the most important:

(1) Mastering, as far as possible, the essential bases and principles of American religious freedom and Church–State separation as these have been laid down in our constitutions, Federal and state, court decisions, legislation, and other government actions.

(2) Restudying American political, social, and religious history to find all events and issues of importance—whether well-known or largely forgotten—where Church–State relations, either co-operative or antagonistic, have arisen.

(3) Investigating specialized histories, biographies, reports, records of legislative and Church assemblies, and monographs—many of them little known and difficult to find—to secure adequate firsthand information about these events and incidents.

(4) Studying contemporary problems of relationship between Church and State in the United States and the ways in which they are being met.

(5) Organizing the material found so that it might be of most service in its chosen field both as a narrative and as a work of reference.

(6) Interpreting the results and their significance to democracy and civilization.

After this outline of the main purpose, scope, and arrangement of these volumes, these seven converging reasons may serve to show why this time seemed specially appropriate for making this historical study:

(1) The commemoration in 1938 of the one hundred and fiftieth anniversary of the adoption of the Constitution of the United States, and the similar commemoration in 1941 of the ratification of the Bill of Rights—the two documents which, taken together, are the surest guarantee of our religious freedom. These events have helped to stimulate a decade of thinking on the subject of Constitutional Church–State separation and religious freedom, with an un-

paralleled production of books on the subject. But none has appeared that shows both the Constitutional background and especially how this has been interpreted and implemented throughout our history in all the more significant public events, movements, and decisions.

(2) The holding in 1937 of the most important conference in modern times on the Church, the community, and the State. It brought together nearly eight hundred delegates and associate delegates from about fifty countries and one hundred religious bodies. Its two-weeks' session at Oxford, which I was privileged to attend, concentrated world attention on the complicated but vitally important problem of Church-State relations. Its influence on Christian thinking in this and other countries has been marked, and showed itself particularly in the actions of the first session of the World Council of Churches, held in Amsterdam in 1948.

(3) The interest of the newly formed United Nations (1944) and especially of its Commission on Human Rights under the leadership of Mrs. Eleanor Roosevelt. This has brought much attention to the American Constitutional provisions for religious freedom. It resulted in the adopting in 1948 of a strong statement on religious freedom in the "Declaration of Human Rights."

(4) The recent tragic development in Europe of totalitarian and authoritarian States which have either opposed the Church entirely or insisted that it should give up its independence and conform to State regulation. This has brought the whole question to the fore.

(5) The unusually large number of serious and complicated questions of adjustment between Church and State in the United States at present which demand intelligent solution based on American Constitutional provisions and experience. These came to a head in 1947–1948 with certain epoch-making decisions (Everson and McCollum cases) which may profoundly affect Church-State relations in American education.

(6) The serious readjustments in moral standards in the United States—some of which seem to threaten the stability of the home—due partly to the aftermath of war, but largely to the lack of any substantial ethical and religious education for the majority of our youth. This matter of providing an adequate motive in education for pupils of the public schools is the most important and difficult unsolved problem in Church-State relations in this country. It is the reason that so much attention is given in these volumes to the religious education problem under the American Church and State tradition.

(7) The importance for the people of both Europe and America that, in formulating terms of peace and of national readjustments in the decade after World War II, they should know and understand the American system with its effective guarantees of religious freedom. Otherwise new Constitutional de-

velopments may be but a prelude to further civil disasters and international wars.

Let us consider these in turn:

First, the significance of the commemoration in the past decade of the great events which took place in this country one hundred and sixty years ago. The one-hundredth anniversary of the ratification of the Constitution resulted in the publication in 1888 of a brief but important book on the general subject of our study. It was by a distinguished theologian and church historian, the Reverend Philip Schaff (1819–93). Its title was *Church and State in the United States, or the American Idea of Religious Liberty and Its Practical Effects, with Official Documents.* It still remains a standard work within the limits set by the author; but the expansion in the past half century in the social outlook and work both of Church and State, the new problems raised by the twentieth century, and recent studies of the foundation of our government and the early development of religious freedom in our country, make imperative a new and much more extensive study.

Recent events both at home and abroad show with increasing clarity that our religious freedom goes back mainly to our American Constitution and Bill of Rights, and the ideals, traditions, and laws which produced them and which have grown up under them. These need careful study if the blessings they have given us are to be preserved to posterity.

The sesquicentennial anniversaries of the events of 1789 and 1791 have not as yet been marked by any book designed particularly to show the historic development of religious freedom under our Constitution. The nearest approach is the publication in 1940 of an English translation of Luigi Luzzatti's work on Church and State—*God in Freedom*—with a valuable American appendix. The importance of the sesquicentennial of national religious freedom in the United States deserves historical treatment in a book devoted to the subject. Otherwise the lessons of that freedom may be overlooked.

Recent standard American histories seem usually to lay too little emphasis on the significance of the Bill of Rights, and particularly on its guarantee of religious freedom as far as the Federal government is concerned. Such competent books as *The Rise of American Civilization* by the Beards, and *The Beards' Basic History of the United States,* as well as *The Growth of the American Republic* by Professors Morison and Commager, which stress social and political development, scarcely more than mention this fundamental document which has made such an impressive contribution to American ideals. Without it the Church–State problem would not be so nearly solved in this country.

Similarly, there is a tendency on the part of a group of American historians

to lay emphasis on the part played by religion and the Churches in the colonies, and then, after mentioning briefly the Constitutional provisions for the separation of Church and State, to leave the factor of organized religion almost out of account in the later chapters, except for referring briefly to its part in a few episodes such as the slavery contest, Know-Nothingism, the development of the West, and the rise of social Christianity. It seems time, then, for a fairly full story of the whole subject as an element of vital importance to the understanding of our history and present problems. The happy, beneficent, and effective working for over a century and a half of our Churches—using the term in the broadest sense to include all organized religious denominations—in the forty-eight states under their own constitutions and in the territories functioning under Federal auspices, forms a fit theme for a careful and well-documented study. These volumes are written from the standpoint neither of Church nor State exclusively, but from both points of view, or, perhaps better, from that of the citizen who looks upon civil government and religion as independent but as both highly significant for the common welfare.

It is important that at a time when our Churches and their members are taking such an encouraging interest in improving the conditions of life for the rank and file of our citizens, they should understand clearly the different functions of the Church and the State in this and related matters, and that they should know just what Congress and state legislatures, Federal and state courts, and the recognized leaders of American public opinion both in civic and Church life, have said on the subject.

This is the reason that so much space has been given in this study to authoritative statements from both sides of the relations which have existed or which should exist between them, and of the significance of great issues in which both have been and are deeply concerned. On the general need of religious freedom there is virtual unanimity among thoughtful leaders of American public opinion, but when it comes to the "separation of Church and State" there is still much confusion and misunderstanding among many groups. Atheists, and some political radicals, think that it means that government must not interest itself deliberately even in creating general conditions favorable to religion; Jews are at times inclined to think that it implies that the specifically Christian American tradition can be overlooked by lawmakers; Roman Catholic prelates still occasionally refer to the "separation" as merely a "shibboleth"; and some Protestants, when feelings run high, throw the weight of their denomination as such into a partisan political campaign. Evidently there is need of a clearer understanding of the historic basis of our mutually friendly Church-State separation.

The *second* reason which has led to the writing of these volumes has to do

with the great world conference at Oxford in the summer of 1937 and its aftermath, especially the first meeting of the World Council of Churches in Amsterdam in 1948. The committee which had charge of arranging for the participation of the American associates in the world conference requested me to make a special study of the relations between Church and State in the United States. As my studies advanced I accumulated much more material than it was feasible to use at the conference, and it seemed advisable to comply with the request of friends to develop this into an adequate and well-documented study on the subject. This I have been more ready to attempt, because I am hopeful that as a result of this extraordinarily important conference and the developments that succeeded it the whole question of the relations in the United States of what used to be called "the two powers" may become increasingly a subject of study throughout the country. Furthermore, my experience at the conference, and my studies there and elsewhere of the friction that has developed in most European states in determining the proper spheres of Church and State, and the ways in which each can make its best contribution to human welfare, have convinced me that certain principles worked out in the United States are capable of broad acceptance elsewhere.

The *Message to the Christian Churches of the World,* drafted by a committee of which the Archbishop of York was chairman, and adopted with virtual unanimity by the three hundred delegates at the Oxford Conference, together with extracts from the reports adopted on the relations of the Church to the State, to the community, and to education, are published as an appendix, so that American conditions may be studied in their relation to those in the world at large. The message and reports give for the first time an authoritative, though not official, statement of non-Roman Christian opinion on the matters covered. It seems proper to compare the significance of these statements with that of the great Roman Catholic classics—the encyclical letters of modern popes, such as the *Immortale Dei,* on the "Christian Constitution of States," issued by Leo XIII, 1885; the *Sapientiae Christianae,* 1890, on the "Chief Duties of Christians as Citizens"; the *Rerum Novarum,* 1891, on the labor problem, by the same pope; and the *Quadragesimo Anno,* 1931, by Pius XI. The *Rerum Novarum,* as in many ways the most important for our subject of modern papal statements on the general subject of these volumes, is also quoted at some length in the appendix.

These documents show clearly the conviction that the Church has a definite responsibility to make its influence felt in proper ways. It has influenced the world both directly and indirectly for good in the past; and there seems to be no reason why, if the lessons of history are learned and followed, it should not be again a mighty factor in solving twentieth-century problems. As Dr. J. H.

Oldham, who was mainly responsible for organizing the Oxford Conference on Church and State, in his *The Function of the Church in Society,* said: "Christian opinion voiced by the assemblies and courts of the church has had a definite influence in shaping public policy." A detailed story of these efforts in the United States should certainly have interest and value, and should give added significance to the important declarations on religious freedom made by the two great world Christian conventions in 1948 in which Americans played a large part—the Lambeth Conference of the Anglican communion, and the first meeting of the World Council of Churches at Amsterdam.

The *third* reason which gives present-day significance to such a study as this is that the United Nations is indicating its interest in religious freedom. This has been shown in various ways. The Assembly has, for instance, laid emphasis on it in connection with the Palestine settlement; it has concerned itself in the state trials of Cardinal Mindszenty and various other Catholic prelates and Protestant leaders in Soviet-controlled countries of Eastern Europe who are not sympathetic with the dominant political control; and it is committed to the Declaration of Human Rights, as drafted by a committee of its Economic and Social Council, with a strong religious freedom clause. The recent decision of the secretary-general to open a special prayer chamber for individuals of all faiths in the New York headquarters may also encourage mutual sympathy among representatives of different religious groups. This is also true of the Assembly's decision to open and close its sessions with a brief period of silence, for meditation and prayer.

If these and similar efforts are to succeed they must be aided by a knowledge of the history of the working of religious freedom under constitutional guarantees such as have existed in this country; even though the United Nations, on account of its constituency with widely varied traditions, is not able to take up Church-State problems which involve formal institutional relationships.

The *fourth* reason which seems to make this study worth while at this time is the situation in many parts of Europe and in certain other parts of the world, where the Church, formerly powerful and given a large measure of self-determination, is being subjected to the totalitarian idea of the State. Not only has the modern State almost everywhere annexed much of the former recognized territory of the Church, but in some States what is left of that territory is being increasingly circumscribed, and its guardian is treated with little respect and made to conform to extremely hampering regulations.

The conditions that developed after World War I in Soviet Russia, Germany, Mexico, and some other countries, are too well known to need retelling here. The denial of religious freedom reached its climax in Germany and Russia. Russia, prior to the temporary change for the better which came with

its decision to oppose Hitler in World War II, has been perhaps the more ruthless in trying to suppress the Church and religious faith. Germany was in at least one respect more unchristian: in its cruel persecution of the Jews and in its denial to them of most civil rights; a tendency which under Nazi influence spread to Italy, Austria, and some other countries. The State in some of these countries, realizing the importance of religion as a factor in developing youth and in controlling the ideals of citizens, determined that the Church could be allowed to exist only if its policies were in harmony with those of the dominant State. In such cases freedom of the Church, as we know it in the United States, became unknown; its activities increasingly confined exclusively to the religious sphere, and even there often discouraged, rather than encouraged, by the State. Education, even of a voluntary character, has been removed more and more from Church control and is being placed entirely in the hands of the State, so that the citizenship of the future may be regimented according to the State's ideals. In other words, the independence of the Church as a witnessing and teaching body has been seriously hampered in several formerly "Christian" countries, while at the same time World War II and its aftermath have brought into bold relation the significance of the American Constitutional separation of Church and State. Now as we are living in a time when the cable, the radio, and other means of communication have broken down all barriers between states, as far as thought is concerned, except where an "iron curtain" is imposed; and as modern methods have developed a type of effective propaganda entirely unknown in earlier days, it has become increasingly apparent that if America is to retain her traditional independence of Church and State we must be informed of the exact character and basis of that independence, so that we may resist dangerous world tendencies and plan wisely for the future.

The *fifth* reason for these volumes is to call attention to the large number of difficult points of contact which inevitably arise between Church and State in the United States, and to create an intelligent interest in them. I confess that until a decade ago I had not realized how numerous and how potentially significant these contacts are. If the reader questions this, let him take up a great metropolitan daily newspaper any day and go through it carefully, noting how many of the events recorded have their significance from the standpoint of this study.

As an example, the *New York Times* of December 27, 1939, soon after I began my intensive studies for these volumes, contained at least four articles which would come directly under any survey of this character. A front-page article, entitled "Church and Public Hail Peace Move of the President," discussed the president's proposal to send his personal representative to the Vatican

in the interest of promoting a peaceful settlement of the European conflict, with comments from Church sources both favorable and unfavorable. The opponents expressed the fear that it would lead to breaking down the important principle of Church and State separation in this country.

Then there was a long article on the question of whether the Protestant Episcopal Church should advocate the inclusion of its lay employees under the Federal Social Security Act. The National Council of the Church had gone on record as favoring such inclusion under the old-age section of the Act, but not under the employment section, while the Church Pension Fund of the Church opposed both, believing that the result would virtually involve taxing the Churches, with the consequent creation of Church–State friction, as well as destroying the independence of the Church from the State. And the same copy of the *Times* contained an interesting survey by the American Library Association of the reading of school children, as a result of a nation-wide survey under the auspices of the Chicago Public Library. This showed that 90 per cent of the children voting in the survey liked to read the Bible. Another article of a couple of columns dealt with the murals in the new Department of Justice Building in Washington, some of them religious, such as the panel of Justice mitigated by Mercy, with Christ as the central figure.

During the decade since these events, Church–State problems as distinct from those of individual religious freedom have grown in number and seriousness. This has been due mainly to two factors: the increased aggressiveness of the Catholic hierarchy in advancing the work of the Church, especially by trying to secure financial aid for parochial schools and their pupils from public tax funds; and the increased aggressiveness of Protestant leaders in resisting these attempts on the ground that they seem inconsistent with provisions of the American Constitution as heretofore interpreted by the courts. These developments reached a climax in the years 1948 and 1949. Newspaper headlines involving issues outlined in these volumes were of daily occurrence. Among these were some old ones, such as diplomatic representation at the Vatican, birth control, and free bus transportation at public expense for parochial school pupils. Relatively new ones were the wisdom of tax exemption for churches—a question raised by some Protestant groups; the opposition of the Roman Catholic Church in some communities to the "proportional representation" plan in municipal elections; the attempt by the Catholic Church in Ohio and some other areas to transfer the expense of parochial schools to tax funds, and its insistence that proposed Federal aid to education should include aid to parochial schools.

There is scarcely an issue of a daily paper, even in the middle of the week, when Sunday services are not prominently referred to, that does not contain

some references to a decision of one of the courts in a "Jehovah's Witness" case, or to the advocacy of state prohibition by some Protestant Church group, or to the question of State aid—direct or indirect—to Roman Catholic parochial schools, or to similar subjects. It is only as the public realizes how important these issues are, and what our past experience with them has been, that they will be wisely settled. This means that the leaders of public opinion—editors, legislators, teachers, clergymen, and others—must know the history of Church–State relations in this country. This is why I have felt it essential to publish quotations from many important statements by Church assemblies and Church leaders, as well as Constitutional provisions, statutes, court decisions, and opinions of publicists, in every period of our history and dealing with all the major problems of adjustment between Church and State. It seems necessary to bring this material together for purposes of reference, study, and application to the problems of today. If, as a result, any severe critic should feel that I have done little more than provide the necessary basis for a study of religious freedom in this country, instead of producing a philosophical history of the subject, I shall not complain unduly, although I have tried to show the connection between the incidents and subjects discussed; to interpret their deeper significance; and to trace the historical development of the important and closely related American principle of Constitutional separation of Church and State.

The *sixth* reason is the apparent threat to the stability of the family as the fundamental social unit, in certain recent changes in moral standards in the United States—due in a considerable degree to the lack of adequate moral and religious education of youth. This in turn goes back in part to the separation of Church and State, and is its most, if not its only, unfortunate result. Citizens look to the public tax-supported schools for the education of their children, and these schools cannot officially, under the Constitution, give systematic religious instruction. There have been some highly significant experiments in what might be called regular "common denominator" courses, in the objective treatment of religious factors in cultural courses, and in encouraged voluntary classes; but as yet no effective moral and spiritual training on a national scale has been worked out. It is believed that the problem can be solved under our Constitution, but only after the history of religious freedom in the United States, the Constitutional restrictions, and the difficulties of the problem have been carefully studied. We must, without any alteration in our framework of government, develop some wise plan to meet the emergency; perhaps through the co-operation of the churches and the public in our several communities in a system of effective religious education in voluntary classes outside the school, but comparable, in their effect on the character and ideals of youth, with the religious instruction provided by the State in Sweden, Denmark, and Scotland.

Some plan can surely be devised, equally acceptable to Protestant, Roman Catholic, and Jew, which will prevent the continuance of the tragedy of "religious illiteracy." Next to World War I and its aftermath this is believed by many to have been the most serious cause of decline in certain personal moral standards involving the family in the last two decades.

The *seventh* and last of the reasons which seem to make such a study as this important at this time is to make a contribution, however small, to the cause of securing adequate guarantees of religious freedom in the international peace agreements which must follow the war and in the national constitutions or their revisions which will result. Unless unchristian ideas of religious persecution and totalitarian ideas of religion in relation to the State can be overcome, and true religious freedom can be assured all responsible religious groups, there is no worth-while future for humanity. Since the most thoughtful publicists in the modern world have decided that, except in a very few countries which have had long and successful experience with a Church-State connection combined with complete toleration of all other religions, the plan of complete organic separation between religious and political powers is advisable, the experience of the United States should prove invaluable. Here for more than a century and a half Church and State have been disconnected; no denomination has been given a preference; adherents of all religions have equal civil and religious rights and protection; and the Churches (including by the term here, and generally in these volumes, synagogues and temples of various faiths) flourish on the basis of voluntary support with the aid of tax exemption for their places of worship. Surely this experience in more than fifty different but closely related major political units—the Federal government, the states, the District of Columbia, and the territories, with two hundred and fifty recognized religious denominations, a total population that will soon be a hundred and fifty million, and a background of scores of nationalities and languages—must have a lesson of importance for those whose duty it is to plan for a reconstructed world. Even our mistakes in dealing with the problem will prove to have their value.

It is important that Europeans and Americans should realize a basic fact in the American situation: namely, that our problem is mainly one of adjusting the Churches to the constitutional and statutory requirements of our forty-eight different states. The Federal government, aside from upholding its fundamental Constitutional guarantees, and providing Army, Navy, and Congressional chaplaincies, concerns itself relatively little with religious organizations or with institutions of public education. It is consequently important that our citizens should have brought home to them the fact that our system of state and local responsibility gives them opportunity to experiment in con-

structive ways to improve conditions where State and Church meet. This is especially true in developing methods of providing an adequate system of voluntary religious education without interfering with our inherited ideals of religious freedom and of separation of Church and State—hard-won privileges which must be retained at all costs.

If this study of the fundamental laws, facts, and conditions—historical and contemporary—of Church and State relations in the United States proves helpful to students of this important world-wide problem of adjustment, I shall be more than satisfied. I am specially hopeful that it may be made the basis of study in colleges and in adult church groups, so that the coming generation, knowing something of the background of the problems here outlined, may be able to grapple with them constructively and in fairness both to Church—including all the churches—and to State, including all the states. With this in mind, the material has been so organized as to simplify such serious study.

I make no apology for the large number of quotations of constitutional provisions, statutes, judicial decisions, resolutions of religious bodies, and other expressions of authoritative opinion on the various issues involved. I have thought it important, in view of the vital significance of the subject and the lack of an intelligent understanding of it, to bring together in one work source material from hundreds of different books, reports, and pamphlets. This is necessary because probably only a very few libraries contain more than a small fraction of the works consulted. It is perhaps true that these inclusions, as well as the presentation of all the important historical and recent instances of Church-State contacts will seem to some to make the book more suited for students and persons specially interested in the subject than for the general reader; but it has been necessary for a comprehensive pioneer work of reference and study. It may well be followed in five or ten years by a much abbreviated popularized presentation, touching only on the highlights.

The preparation of these volumes has been my major avocation during two years of active Church and civic duties in Washington, and during ten years since, in which I have had other heavy responsibilities, especially in the field of race relations. I am fully conscious of the limitations of this study. Although I have done personally all the writing and most of the research, the results would have been even more inadequate had it not been for the co-operation of many agencies and individuals. I take this opportunity of thanking especially the following:

(1) *Libraries.* The study owes much to the effective aid of three of the nation's great libraries—the Library of Congress in Washington, the Yale University Library, and the New York Public Library. The local library in Lenox,

Massachusetts, one of the best village libraries in America, with about fifty thousand volumes, has also proved most helpful.

The Library of Congress has not only lent me hundreds of volumes, but has at times provided the titles of books covering special fields. I would also mention especially its Legislative Reference Service, which has proved very valuable in providing various statutory provisions, laws, and judicial decisions.

The Yale University Library has given me the same type of co-operation as the Library of Congress. Its reference librarian, Mr. Henry M. Fuller, has also been most co-operative in providing the addresses of publishers for copyright permissions and in securing photostats of title pages, etc., for illustrations.

The New York Public Library has also been invaluable, and has placed its services most freely at my disposal.

The Frick Art Reference Library has helped in securing photographs of American portraits for reproduction.

(2) *Other Organizations.* There are many organizations conducted by educational, public-service, and religious bodies which have helped by answering inquiries. Among these I would mention especially the National Catholic Welfare Conference, the Federal Council of the Churches of Christ in America, and the American Civil Liberties Union.

(3) *Books and Monographs.* The names of the books and monographs which have been found most useful are duly given in the bibliography (Chapter XXVIII), with some account of their contents and significance.

I believe that no scholar has heretofore undertaken to cover the entire field of this work combining the historical study of Church–State relations in this country under the Constitution and the existing status of religious freedom in various fields. Perhaps the nearest approach of a scholarly character was made in 1888, when the American Historical Association, sensing the need and wishing to commemorate the one-hundredth anniversary of the Federal Constitution with its religious-freedom guarantees, published Philip Schaff's significant work on Church and State. But this was before the application by the Supreme Court of the Fourteenth Amendment to the protecting of religious freedom in the states; and before the many developments in Church–State relations which came with our acquisition of the Philippines, the large Jewish immigration from eastern Europe, the growth of anti-Semitism at home and abroad, the revival of the Ku Klux Klan with its increased anti-Catholic bias, the great development of chaplaincies in the two World Wars, the rise of the Roman Catholic Church to national influence both in social welfare and education, the struggle over the teaching of evolution in public schools, the rise of the Jehovah's Witnesses with their aggressive insistence on proclaiming their

special tenets, the national interest in birth control and divorce laws, the ardent proclaiming of pacifism by large groups in the Churches, and many other movements which have made our world very different from the world of fifty years ago. Furthermore, Dr. Schaff's work does not treat at all extensively the different adjustments between Church and State which took place as a result of the various national historic events between the founding of the nation and Reconstruction. His volume does, however, well supplement and carry forward into the national period the research of Dr. S. H. Cobb in *The Rise of Religious Liberty in America*, which tells the story so admirably for the original colonies that I have not dealt with that period at all extensively here. The principal defect of Schaff's scholarly volume, from our standpoint today, is that it was written before the many undreamed of developments of recent decades, and before the intensive study of many features of importance in the earlier period.

Of all the hundreds of books and monographs I have consulted, by far the most valuable for my purpose, for source material, has been Carl Zollmann's *American Church Law* (1933). This is a well-edited compilation of the laws and judicial decisions bearing on religious bodies as corporations, covering tax exemption, ownership of property, religious education, the civil rights of church officers, religious liberty, and similar matters. As a book of legal reference it is invaluable. It cites nearly twenty-five hundred cases, giving dates, court records, summaries, and quotations. *American State Papers and Related Documents on Freedom in Religion*, of which the fourth revised edition appeared in 1949, is somewhat of an *omnium gatherum*, but is specially useful for its reproduction of laws and court decisions both of the Federal government and the states.

These volumes were nearly finished when in 1945 there appeared the important work by Professor M. Searle Bates, *Religious Liberty: An Inquiry*. This is the most thorough and impartial study yet made of its subject. It was issued under the auspices of the Joint Committee on Religious Liberty of the Federal Council of Churches and of the Foreign Missions Conference of North America, which invited the present writer to be one of a small group to read it critically in proof. This he did with profit. It differs from this work in that it deals with the problems of religious freedom in every nation, devoting (quite properly, in view of its purpose) relatively little attention to history, and only a few pages specifically to that of the United States; while *Church and State in the United States* devotes three volumes to the history and present condition of the relationship in this country, and refers to other countries only enough to give background and a basis of comparison. One is a much needed universal study of contemporary religious freedom by countries; the other an

intensive study of the subject in the United States stressing its historical aspects. Both are written from the standpoint of a Protestant Christian background, but with an attempt to be scrupulously fair to all other religious points of view.

The reader is referred to the introductory statement in the bibliography (Chapter XXVIII) for an analysis of the use made of primary and secondary authorities, as well as for an analysis of the major documentary sources used to ascertain the laws, events, and representative points of view from which alone may be derived the three essential factors—the attitude of the State; the attitude of the Churches; and the attitude of citizens or public opinion—on which the enforcement of all laws and policies involving religious freedom and Church-State separation depends.

It is not necessary to indicate the standard books of general reference, but four have been so much used for checking dates and other facts that they should be mentioned: the various *Who's Who* publications; *Appletons' Cyclopaedia of American Biography;* the *Dictionary of American Biography;* and the *Dictionary of American History.*

For the foundation work in the history of the Churches the following books have proved specially useful:

For Roman Catholic and Jewish-American backgrounds and present attitudes: *The Story of American Catholicism* by Theodore Maynard (1941); and *The American Jew* (1942), edited by Oscar L. Janowsky. These both emphasize cultural contributions.

"The American Church History Series" (1893–97). These thirteen volumes, dealing both with the *History of American Christianity* (by Leonard Woolsey Bacon) and with all leading American Protestant denominations, are of somewhat unequal value, but, in spite of their early date, are all useful.

These need to be supplemented by the later works of Christian and Jewish scholars; of whom none are more eminent than Monsignor Peter Guilday, Max Kohler, and Professor William Warren Sweet—representing respectively Roman Catholic, Jewish, and Protestant backgrounds. Peter G. Mode's *Source Book and Bibliographical Guide for American Church History,* the *Catholic Encyclopedia,* and the *Jewish Encyclopedia* have proved specially useful—the latter two for giving authoritative articles with bibliographies on the major religious minority groups in the United States. Similarly, the *American Jewish Historical Society Publications,* of which more than forty volumes have appeared, and the corresponding *Studies in American Church History* and *A Guide to the Printed Sources for American Church History 1492–1922,* both published by the Catholic University of America, should be mentioned.

When we turn from the Church to the State side of the story, it is difficult to choose from the wealth of material, but a few works merit special mention.

Jonathan Elliot's *Debates in the Several State Conventions . . .*, Madison's *Notes*, Francis Thorpe's *The Federal and State Constitutions*, and the 1938 New York State Constitutional Convention Committee's *Constitutions of the States and the United States* (Volume III)—the latter two being authoritative works giving source material regarding American constitutions that have been always by my side. Max Farrand's *The Records of the Federal Convention* has also proved invaluable in its field; as have the *Congressional Record* since 1873, and its predecessors—the *Annals of Congress* (1789–1824), *Register of Debates* (1824–37), and *Congressional Globe* (1834–73). Among historical records none have proved more basic for my purposes than those which give the decisions of our higher courts. Among these are *United States Supreme Court Reports, Law Reports Annotated*, and its successor *American Law Reports*.

Turning from volumes that give the basic material for American Church–State relations from the respective points of view of the Church and of the State, we come to studies which deal directly or indirectly with our subject from the standpoint of the independent scholar. Here Theodore Schroeder's *Free Speech Bibliography*, Gustavus Myers' *History of Bigotry in the United States*, and works dealing with our problem such as those (mentioned in the bibliography) by William Adams Brown, Richard Gable, Ernest Johnson, Charles C. Marshall, Conrad Moehlman, John A. Ryan, and Leon Whipple will prove most useful. Any list should include two specially helpful works by Italian scholars —both translated—which deal at length both with the European backgrounds of American religious freedom and with American conditions—Luigi Luzzatti's *God in Freedom* and Francesco Ruffini's *Religious Liberty*.

The literature of the past two years on our subject has been notable. I owe much to such works as *Religion and Education under the Constitution* by J. M. O'Neill, giving the Roman Catholic position; *American Freedom and Catholic Power*, giving the critical viewpoint of liberal Protestantism; *American Overture: Jewish Rights in Colonial Times* by Abram Vassen Goodman; and the *Judicial Doctrines of Religious Rights in America*, by William George Torpey.

The standard American historians, including especially those who have dealt with the history of democratic thought and idealism in this country, such as Curti, Gabriel, and Weigle, have made their contributions, especially *American Idealism* by Weigle in the "Pageant of America" series. I have drawn heavily on biographies and autobiographies, local histories, and the impressions of European visitors, especially publicists such as De Tocqueville and Bryce. The periodical and daily press also reflects public opinion on Church-State issues.

Hundreds of books and articles on special events, movements, and men—many of them scholarly monographs written as Ph.D. theses—have been consulted. It is impracticable here to list their titles. They will be referred to in

the notes, and some of the more important will be mentioned in the bibliography. Suffice it to say that without them these volumes would have lost nearly half of their value. Take for example the rise of religious liberty in Virginia. Here we have a series of special studies, duly documented, by Eckenrode, James, McIlwaine, and others. Or to take one other illustration from a thousand, such a careful study as that by E. Milton Altfeld on *The Jew's Struggle for Religious and Civil Liberty in Maryland,* telling of the extraordinary work of a Scotch Presbyterian layman who gave his life largely to securing the complete emancipation of the Jews of the state, has proved most useful.

(4) *Reports and Serial Publications.* I am also indebted to hundreds of reports and pamphlets of various agencies, such as the American Civil Liberties Union, the National Catholic Welfare Conference, the National Conference of Christians and Jews, the Federal Council of the Churches of Christ in America, the Jewish Welfare Board, the American Jewish Congress, the American Association for the Advancement of Atheism (for secularist literature), and others too numerous to mention. The annual or biennial yearbooks—Protestant, Catholic, and Jewish—have also proved valuable, as have the publications of many historical societies.

(5) *Religious Statistics.* It has been difficult to determine the best authority for religious statistics. The census report entitled *The Census of Religious Bodies,* published by the Federal government in 1926, was satisfactory, but is now out of date. That of 1936 was much less satisfactory, due largely to the fact that there had developed in the meantime a sensitiveness on the part of some religious bodies on the subject of Church–State separation, and it was thought by some that the government should not collect religious statistics. Furthermore, Congress did not provide funds for the proposed 1946 census. This difficulty is considered where we take up certain "Recognitions of Religion" by government [XXIV, 5 (4)]. *The Yearbook of American Churches,* published annually under the auspices of the Federal Council of Churches, has been much used. From the 1936 government reports and the later reports of the *Yearbook,* supplemented by official Catholic and Jewish statistics, we have been able to give fairly satisfactory figures; but there is no one authoritative recent summary to which we might appeal.

(6) *Periodicals.* Periodical literature, especially the religious press of all periods, has been much used. Of current publications, *The Christian Century* (Protestant) has provided the greatest amount of worth-while material bearing on our subject; but Roman Catholic, Jewish, Episcopalian, Baptist, Unitarian, Presbyterian, Methodist, and other denominational journals have also helped. The representative Catholic journal *America* is specially interested in the problems discussed; so is *Liberty* of the Seventh Day Adventists.

(7) *Officials of Church and State.* The officers of Church boards and of various governmental agencies have responded to requests for information with unfailing courtesy. I have found the secretaries of state of the various states co-operative.

(8) *Individuals.* I am under special obligations to various friends who have aided by giving suggestion or criticism. I would thank particularly:

Professor Ralph Henry Gabriel of Yale University, the distinguished author of *The Course of American Democratic Thought,* for valuable suggestions, and especially for writing the introduction.

Dr. William W. Sweet, Professor of the History of American Christianity at the University of Chicago for twenty years from 1927 on, and now professor-emeritus, author of important books in this field. Prior to his retirement in 1946 he gave lectures on American Church-State relations at the University of Chicago and has since done the same at the Union Theological Seminary and elsewhere. It was a source of great good fortune to have him consent to read the manuscript and to discuss it this spring with some members of his seminar on "Church and State in America" at Southern Methodist University, thus giving valuable comments and suggestions based on his knowledge and experience.

The Reverend H. Robinson Shipherd, Ph.D., Litt.D., a former member of the Harvard English Department, has styled the manuscript for the press, and has made many suggestions as to form and contents for which I am deeply grateful. He also read the proofs and prepared the index.

Several members of the bar have kindly co-operated in checking legal references and in reading those parts of the manuscript, especially Chapters VIII and XXII, which deal specifically with Constitutional and legal questions.

Many Roman Catholic, Jewish, and Protestant friends have aided by their judgment, comments, and criticisms.

I feel under great obligations to these and other scholars consulted, but exonerate them from any responsibility for statements of fact or opinion. For these I must hold myself and the authorities specifically quoted entirely responsible.

I am unwilling to close this preface without expressing special appreciation to Miss Ellen Ahern, long a research assistant working at the New York Public Library, who has helped me greatly in looking up and checking references, and to my secretary, Miss Rosalie Malone, who has borne the burden of transcribing most of the material either from dictated notes or from manuscript; I am deeply grateful for their painstaking accuracy and devotion. I am also much indebted to Mrs. Howard Chapin of Lenox, who carried on during Miss Malone's absence in war service.

I am under obligations to my friends of the Religious Book Department of Harper & Brothers for their generous and competent co-operation in all matters connected with the publication of these volumes.

My deepest obligations are due to my wife, who has not only been wise in advice, but a good constructive critic. She has shown great consideration and co-operation during the twelve years of my preoccupation with these labors.

It was my original intention to publish these volumes earlier but the war, with its insistent call for various types of service, and some ill health, as well as publishing difficulties due to paper shortage and the high cost of labor, made this out of the question. It is of course impossible that such an extensive study, involving some conditions of change and many of development, can ever be brought entirely up to date; but I believe that all important events bearing on the subject of the separation of Church and State in the United States and the resulting religious freedom have been recorded through the first half of 1949.

Some of these events have been of special significance for our study. For example, the public reaction to the McCollum decision of the Supreme Court (1948), holding unconstitutional the practice in Champaign, Illinois, of permitting religious instruction by representatives of the Churches in public school buildings in school time [XVIII, 1, (3)]; the proceedings before the Episcopal diocesan authorities and the state courts regarding the right of the Bishop of Long Island to sever the Reverend Dr. Howard Melish from his rectorship because of the alleged radical activities of his son, the assistant minister, whom he would not dismiss [XXII, 2, (4)]; and the controversy between Cardinal Spellman and Mrs. Roosevelt regarding payments from tax funds to parochial schools [XIX, 6, (4)]. An attempt has also been made to include contemporary or very recent statistics—always difficult in the American Church field—on all sorts of Church matters in which the State is interested. But in many cases the most authoritative studies are a decade or more old. Furthermore, when facts, laws, or statistics are quoted the date of the book, pamphlet, or letter from which they are taken is almost always given in the notes or bibliography, so that the reader may understand their relative significance today.

At least five features of these volumes should perhaps have special comment:

(1) The many illustrations (115) taken as far as possible from engravings, prints, or books contemporary with the events described.

(2) The citation of laws, judicial decisions, actions of religious bodies, and opinions of representatives of Church and State. This is with the view of giving the study accurate documentation.

(3) The biographical emphasis. An attempt has been made to include ref-

erence to all persons who have contributed notably to the cause of religious freedom in this country. Similarly, I have placed the date of birth and death after the names of all persons referred to when this information helps to place an important participant, or to show by his age at the time of an event or utterance the significance of his contribution.

(4) The table of dates dealing with religious freedom and Church-State relations in the United States, with the colonial and European background, and outstanding events in these fields the world over. I believe that no such compilation has before appeared in any country.

(5) The critical and classified selected bibliography, which gives brief résumés and critiques of about three hundred books that have been found useful. More than twice as many others are referred to in the notes.

The author acknowledges that he has been more interested in presenting adequately the actual historical developments in Church-State separation in the United States and their significance for religion and democracy, than in trying to write a work of literary distinction. He is fully conscious that the inclusion verbatim of extracts from many State and Church actions means a longer and less readable work than if he had more generally adopted the expedient of condensation or paraphrasing. He hopes, however, that what has been lost in the way of literary quality may have been partly justified by greater factual value and larger usefulness for study or reference purposes. He hopes that the space given to interpreting events in Church-State relations and trying to show their relation to other political and social trends, as well as the introducing of a large element of pertinent biographical material, and illustrations contemporary with the events recorded, may help to prevent these volumes from becoming too dull or colorless. His interest throughout has been primarily in securing clarity in the organization and presentation of relevant material of value. Similarly, not being a lawyer and being more of a social historian than a legal student, he has been less interested in the detailed legal arguments regarding the separation of Church and State than in the carrying out by Federal and state governments as different problems have arisen of the principle of such separation inherent in the basic American ideals of Constitutional religious freedom—ideals which he holds in reverent respect.

Two matters of literary form both relating to capitalization seem to call for passing comment. I have yielded reluctantly to the modern usage of giving the titles of even the most exalted personages, when used without a personal name attached, with a small initial letter. To refer to the president, the pope, the moderator, the chief justice, the rabbi, in this way seems to me—born in the Victorian era—as lacking in proper respect. But I must observe the present rule

of the best presses and publishing houses. Perhaps the dropping out of the initial capital for such persons is symptomatic that we are living in a democratic, "lowercase" age! I even do not like to name a definite national movement such as prohibition, or expansion—whether or not the movement has my approval—without a capital. But again I yield.

The matter of the word "church" and its plural in various connotations has been embarrassing. In the phrase "Church and State," the two great powers with which these volumes deal, we have been uniform. Similarly, with reference to the "Church" as representing organized Christianity, or even at times the organized forces of religion, this is relatively simple. So are the words "church" and "churches" as applied to local places of worship or groups of worshipers, when a specific name such as St. Peter's is not prefixed. But when the plural is used to refer to religious organizations in the country at large, it is impossible to be entirely consistent without offending religious bodies by using uniformly the small "c." Religious denominations, as such, are properly designated as Churches. But often the churches (local church congregations) and the Churches (national organizations) merge into each other or are both included. The reader's indulgence is therefore asked for occasional inconsistency. It is some comfort that the same inconsistency occurs repeatedly in official utterances of the American Churches themselves. The only alternative to some inconsistency would be to adopt the small "c" uniformly. This has the King James version precedent in dealing with the early church (small c) when it was united; but to follow the custom today where there are so many religious bodies might cause friction, and there are some cases where an important difference between the policies of the local church and the national Church of which it is a member cannot be brought out without much circumlocution unless the double usage is maintained. Perhaps there will be no satisfactory solution until the ecumenical movement has prevailed and there is only one Church universal!

I am aware that there have been, and still are, States with a democratic tradition, such as Great Britain and Sweden, which have in most respects as much freedom of religious thought and action as we have in this country, and yet which continue to support an Established Church. I am also aware that there have been States, such as Russia, with constitutional separation of Church and State and interest in social welfare, which know very little about religious freedom. But I believe that for most States political and religious freedom are inseparable; and that for this country, with its republican form of government and highly diversified population, any other arrangement is quite impossible if democracy is to be preserved. One can see this clearly by noticing that tyrannical political governments have found that they can exist only by

trying virtually to suppress the Church, as in Russia during most of the period between the two world wars; or by trying to make some one branch of the Church the agent of the State in matters of education, religion, and moral instruction, as was frequently attempted in Europe in the nineteenth century. History, however, certainly shows that any extensive Church–State tieup tends toward tyranny, and that separation similarly tends toward freedom. That separation involves dangers and difficulties cannot of course be questioned. Separation makes a high order of religious education harder to maintain, and encourages denominational extremes; but on the other hand it discourages religious formalism and much hypocrisy, and generally develops religious sincerity and vitality. Separation may make more difficult the support of the forms of religion which are fostered by authoritative organizations and by ceremonialism; but it surely encourages religious faith that is based on personal convictions.

I give these volumes to the public fully conscious of their shortcomings, due at least in part to the large areas of historic thought and action I have sought to cover. My wish, in what is apparently the first work of its character, is to give a fairly full-length picture for the benefit of the interested student of the growth of religious freedom under our Constitutional separation of Church and State. I am reserving the right to publish a summary volume for the general reader dealing only with what are today called the "high lights," but at my age it is more likely that this will be undertaken by someone else after my death. I shall, however, welcome any corrections of fact which may seem necessary for such a volume, or for a new edition if it should be called for, as well as suggestions for making the story more complete or more useful. My hope is that readers, whatever their criticisms or angle of approach, may at least recognize the vital importance to the nation of the subject I have tried to treat; and that I have tried to treat it in a spirit of truth-seeking and tolerance. This seems to have been the general attitude of hundreds of correspondents in different parts of the country—historians, librarians, lawyers, leaders of public opinion and government, social agency and church officers—who have answered with almost unfailing courtesy my many inquiries. This confidence I appreciate, and hope and believe it will not prove misplaced

ANSON PHELPS STOKES

Lenox, Massachusetts
Thanksgiving Day
November 24, 1949

BOOK I

Foundations and Historic Adjustments Through the Civil War

Part One

GENERAL INTRODUCTION

Chapter I

THE SUBJECT AND ITS SIGNIFICANCE

Section 1. THE SUBJECT STATED AND ANALYZED

The subject we are to discuss in this work is religious freedom in the United States, together with the points of contact which have developed between organized religious bodies on the one hand and the Federal and state governments on the other. In brief, it may be expressed in the old phrase "Church–State Relations," although strictly, as there is not even the semblance of a State Church and as the churches are entirely independent of the State, no official connection exists between them. Much that is said applies also to a considerable degree to Canada. The most noticeable variations there are the larger power of the central Dominion government, and the public aid to parochial schools in the province of Quebec and other sections where the Roman Catholic population is in the majority, but Canadian conditions are not considered in this survey.[1]

The field of discussion is at times broadened so as to deal with the relations of the Church not only to the organized State and its subdivisions but to the community. This is necessary because in certain fields such as the promotion of the "general Welfare" referred to in the American Constitution, in which the Church is deeply interested, the State accomplishes social objectives partly directly, and partly indirectly through various philanthropic and educational agencies which it incorporates legally and exempts from taxation. It was because those responsible for organizing the Oxford Conference of 1937 realized the impossibility of drawing a sharp line in the field of the Church's public responsibilities that the subject of discussion at Oxford—originally announced as "Church and State"—was changed to "Church, Community, and State."

The fact is that the line of distinction between community and State in some matters of social welfare is very indistinct. For instance, problems of local labor relations almost inevitably lead to state labor legislation. Similarly, problems of relief of the unemployed, even though they begin with the activity of private agencies, end in the State—including the Federal government—assuming wide responsibility. This difficulty would not have been acute a hundred years ago,

[1] Footnote references for each chapter will be found at close of the volume.

but since then the process has been accelerated by which many movements initiated by the Church in relation to community social welfare are now directly related to the State. Consequently, this work deals not only with direct contacts and points of co-operation and friction between Church and State, but with similar contacts between the Church and social movements, as these have been, or are becoming, related to legislation.

It may be well at the outset to put in brief form the major conclusion of our discussion, namely, that

Under the beneficent provisions and influence, direct and indirect, of the Federal Constitution and its Bill of Rights, drafted a century and a half ago mainly by men of Christian faith, traditions, and ideals, and of state constitutions similarly drafted in the course of our history, we have developed in the United States on a large scale a new social phenomenon, namely, self-governing and self-supporting churches and other religious bodies, all equal in the sight of the law and entirely independent of the State (from which they receive no financial aid other than exemption from taxation for property necessary for their work), but existing with the moral support of the Federal and state governments, which guarantee entire religious freedom.

Five purposes have been kept in mind throughout the preparation of these volumes:

To give all the facts and documents essential to an understanding of the origin of Church–State relations in the United States, based on organic separation and mutual respect; of their development during the past century and a half; and of the resulting status of religious freedom.

To interpret the more important of these facts and documents from the point of view of the growth of religious freedom.

To describe the existing relations between Church and State, both under Federal and state constitutions, statutes, and judicial decisions, and the existing points of tension.

To weigh the actual and relative significance of religious liberty in the United States, and its implications for Christianity and democracy in this and other lands.

To suggest some things which need to be stressed if complete religious liberty is to be maintained and if at the same time religion and democracy are to be strengthened.

Although we have recently commemorated the sesquicentennial anniversaries of the adoption of the Constitution (1787–88) and of its Bill of Rights (1789–91) as the fundamental basis of Church–State relations in America and of our religious liberty, there are other important factors on the side of government which must be taken into account. Such are the Declaration of Independence,

the Ordinance of 1787 for the government of the Northwest Territory, and treaties with foreign powers, especially those by which we acquired much of our continental area; the statutes of the United States as adopted by Congress, and binding unless declared unconstitutional by the Supreme Court; the constitutions, statutes, and laws of the various states and territories; the decisions of Federal courts; the actions of the State, Interior, and other Departments and agencies of the Federal government, until and unless reversed by the courts; the decisions of state courts, whose jurisdiction in many matters involving the constitutionality of state laws as to Church-State relations the Supreme Court of the United States recognizes as final, if not contrary to the Federal Constitution and statutes; the opinions of state attorneys general, and of various state and local boards such as those of taxation and education, unless successfully overthrown by appeals to the courts; the rules of equity and the provisions of the common law; the messages of presidents, and the opinions of learned jurists and of influential statesmen.

From the side of the Church it is necessary to consider such matters as: the constitutions of religious bodies and their historical background; their acts of incorporation, canons, and other recognized bodies of doctrine and discipline; manuals of worship where such exist; official utterances on various matters; rules and methods as to administration; the call and rights of ministers; and property ownership. Such constitute the major sources of the hundreds of documents from which we have quoted in these volumes with the purpose of giving an authoritative foundation of law, custom, and opinion on which to base both the history of State-Church relations in America and the conclusions to be drawn from it.

We plan to show in some detail, by studying many historic American decisions and events, the part played by the Church in advancing the interests of the State, and that played by the State in advancing the interests of the Church —using the term in the broadest sense to include Protestant, Catholic, Jewish, and other religious groups. We shall return frequently to a fundamental belief, which our historical studies have confirmed, that religion is necessary to retain the well-being of the State and its citizens, but that government can play no favorites among the many denominations. A separate section[2] will be devoted later to this matter. Let us, however, quote here, at the outset of our study, a few representative statements of this belief.

The late Lord Bryce (1838–1922), viewing the American city with its great contrasts and teeming multitudes, said:

> Suppose that all these men and women ceased to believe that there was any power above them, any future before them, anything in heaven and earth but what their

senses told them? . . . Would the moral code stand unshaken, and with it the reverence for law, the sense of duty toward the community and even toward the generations yet to come? Would men say "Let us eat and drink, for tomorrow we die"? . . . History if she cannot give a complete answer to this question tells us that hitherto civilized society has rested on religion, and that free government has prospered best among religious peoples.

America is no doubt the country in which intellectual movements work most swiftly upon the masses, and the country in which the loss of faith in the invisible might produce the completest revolution, because it is the country where men have been least wont to revere anything in the visible world. Yet America seems as unlikely to drift from her ancient moorings as any country of the Old World. It was religious zeal and the religious conscience which led to the founding of the New England colonies two centuries and a half ago—those colonies whose spirit has in such a large measure passed into the whole nation. Religion and conscience have been a constantly active force in the American commonwealth ever since, not indeed strong enough to avert many moral and political evils, yet at the worst times inspiring a minority with a courage and ardour by which moral and political evils have been held at bay, and in the long run generally overcome.

It is an old saying that monarchies live by honour and republics by virtue. The more democratic republics become, the more the masses grow conscious of their own power; the more do they need to live, not only by patriotism, but by reverence and self-control, and the more essential to their well-being are those sources whence reverence and self-control flow.[3]

The study is undertaken with the conviction so often stated by all the recent presidents of the United States, and epitomized by Woodrow Wilson when he wrote in 1923: "Our civilization cannot survive materially unless it be redeemed spiritually."[4] The Committee on Religious Life in the nation's capital, uniting over twenty of the leading churches in Washington—Protestant, Catholic, and Jewish—put this underlying conviction in these words in its *Memorandum* of 1925:

It is our conviction that a vital religious faith and life directly affect a man's idealism and usefulness as a citizen, and that, although part of a generation may maintain high standards of conduct by living on their parents' ideals, for which religion was in large part responsible, such standards cannot long survive without personal religion, and this is fostered by worship and church loyalty. . . .

In a changing world, in a critical period of human history, it is essential that the moral and spiritual forces of the nation be strengthened, and for this undertaking the churches united for the common task alone provide the adequate means.[5]

Such are typical statements of a basic underlying conviction which has developed as our historic studies have progressed, namely, that a vital religious

faith is a necessity as a source of inspiration and as a bond of fundamental spiritual unity for the majority of citizens in a democracy of an enduring type.

Section 2. THE TERMS DEFINED

A few words demand definition at the outset. Each is subject to many different interpretations, but we give the common definitions as applicable in most cases in this study. We must begin with "Church" and "State."

(1) "CHURCH" AND "STATE": RELATION OF BOTH TO THE "NATION"

It is difficult to find any single definition of the word "Church" suitable for our purposes, for it is commonly used in several different ways.

In the first word of the phrase "Church and State," as used in this work regarding the United States, we have in mind generally the forces of organized religion led by the Christian groups, but including also the Jews and other bodies of worshipers of God. The Church so understood is the collective body of believers in God whose interests are primarily spiritual and ethical. We think of it as a body emerging from the company of God's worshipers in Old Testament times and still including believers in the old dispensation, but having its fruition in the organized fellowship of the disciples of Jesus Christ.

This is a working definition proposed to meet the situation of organized religion in relation to the American State—a new historic situation, as we shall show in a later section.[6] It combines the historic uses of the word "Church" as an inclusive Christian body as given in all dictionaries, with two other recognized usages—that of the Church as represented by the old Jewish dispensation; and that of "other (chiefly modern) religious societies and organizations."[7]

This Church in the United States, although containing some elements of a dominantly quietistic nature, absorbed almost entirely in self-development, otherworldliness, and the proclaiming of an exclusively religious message, is on the whole definitely activist. It is interested in helping to bring the Kingdom of God into the world. Indeed, it is as the Church militant, "the church on earth considered as warning against the forces of evil," that it comes into occasional conflict with the State over matters of social policy.

When we come to the specifically Christian Church as a whole we can accept one of the definitions of Webster:

> The collective body of Christians—all who are in spiritual union with Christ, acknowledging him as their head;—often, as a spiritual society separated from the world, opposed to the world. (*Webster's New International Dictionary*)

In this case it is generally thought of as "the Body of which Jesus Christ is the Head, and all baptized people are the members."[8]

Narrowing the conception to the separate denominational basis, we often think of the Church as

> A body of Christian believers holding the same creed, observing the same rites, and acknowledging the same ecclesiastical authority, regarded either as the only true representative, or as a separate branch, of the Church Universal. (Webster, *op. cit.*)

But there is a fourth use of the word that is common, that is the local place of worship of any religious group. In this case, unless some specifically named church building, such as St. Paul's Church, is mentioned, the word is used without the capital.

All these four uses of the word, and some other minor modifications, will be found in this work, the determination of which is intended in any specific case being generally clear from the context; but the reader's special attention is called to the first usage mentioned. In the phrase "Church and State" we are considering in a broad way the organized forces of religion. In this country—because of colonial backgrounds, national history, number of adherents, affiliation of most outstanding statesmen and cultural leaders, and resulting influence—the Church means primarily, but not exclusively, the Christian Church. Here we try to treat impartially Catholic and Protestant groups, although because of these same objective factors the latter are necessarily given somewhat larger consideration. Furthermore, as Catholic policy in Church-State and social-welfare problems is generally unified and clear-cut, while the Protestant groups, although holding certain common viewpoints, differ largely in their application, the presentation of their case is necessarily more complex.

It must also be remembered that the State has come to have relations to the Church in each of the four uses of the word. For example:

The Church as made up of religious believers in general: the State guarantees freedom of conscience and worship, and exemption from all theological tests for office.

The Church as the group of specifically Christian bodies: the State recognizes Sunday and Christmas Day because of their historic associations, and provides regular Christian chaplains for its legislative assemblies, its military and naval academies, its Army, Navy, and related services—supplementing the last groups when necessary by Jewish chaplains.

The Church as a specific denomination (e.g., Methodist): the State assures legal protection for the proclamation of its various tenets and the observance of its forms of worship, as well as providing it with an appeal to the courts when desired in matters of dispute.

The church as a local place of worship, and its property when used for religious or educational purpose: the State provides exemption from taxation.

This analysis will show that although in the title of these volumes the word "Church" in the phrase "Church and State" is used in the broadest sense, as indicating the general emphasis, it is also applicable to other uses involving State relationships. This is due largely to historical factors, because most of the public—as distinct from purely religious—functions which the Christian Church performed prior to the Reformation, in such matters as the registration of births, marriages, and deaths, education, hospitalization, and the provision of social-welfare agencies have been largely taken over by the State in modern times.

The definitions given do not, however, preclude each religious body, such as the Roman Catholics, or the Lutherans, or any other established communion, adopting its own ecclesiastical or theological definitions. Furthermore, it must be remembered that increasingly with the growth of the ecumenical movement we have the word "Church" used of the Christian Church universal. In this study we shall generally use the term in the singular with a capital to represent the duly organized religious forces, as distinct from the State, representing the duly organized official governmental forces; or, when a denominational name is added, of organized separate churches made up of clergy and laity formed on their initiative, or on that of their recognized leaders, into associations for worship and service.[9]

Legally in this country every church is a "voluntary" association or organization, although William Temple (1881–1944), when Archbishop of York, lecturing in New York in 1915, strongly objected to its being so called, in view of its divine origin; but his objection, which would receive strong support from Roman Catholic and some other groups, can hold only against the Catholic Church or Church Universal, not against its component parts as established under American law.[10]

We turn now to the second noun in the title of these volumes—"State."

State—A political body, or body politic; any body of people occupying a definite territory and politically organized under one government, esp. one that is a sovereign, or not subject to external control. (Webster, *op. cit.*)

Here it must be remembered that in this country there are, in addition to many smaller political units, forty-eight different self-governing states, and one Federal State—the United States Government—which embraces them all and is responsible for the government of territories, insular possessions, and the District of Columbia. It should also be pointed out, as James Bryce (1838–1922) stated in *The American Commonwealth* (1888), that we in this country have had a "comparatively limited conception of the State itself."[11] Of course there

has been a great enlargement of this conception since he wrote over half a century ago, due mainly to the effect of two World Wars, but this fact should be borne in mind in connection with the interpretation of constitutional provisions.

The difference between the nation and the State should also not be forgotten. The nation is the people with their historic background, traditions, ideals, and common loyalties considered as a whole; the State is their organization for maintaining order and promoting the common welfare under a duly adopted constitution. In view of some modern tendencies the fact deserves emphasis that although nation and State act and react on each other, it is the nation which creates the State, rather than vice versa. The State should consequently be the servant, the nation the ultimate master. Similarly and emphatically, the nation does not exist for the State but the State for the nation. Men are not created to be pawns of the State except from the totalitarian point of view, but the State is created to meet the needs of free men living in an ordered society.

The commonwealth or federal-republican idea of government tried, with some success, to correlate the State and the nation. Thomas Hobbes (1588–1679) shows the resulting relationship in the *Leviathan* (1651). "A commonwealth," according to Hobbes,

> is said to be instituted, when a multitude of men do agree, and covenant, every one, that to whatsoever man or assembly of men shall be given by the major part, the right to present the person of them all (that is to say, to be their representative): Every one, as well he that voted for it, as he that voted against it, shall authorize all the actions and judgments of that man or assembly of men in the same manner, as if they were his own, to the end, to live peaceably amongst themselves, and be protected against other men.
>
> From this institution of a commonwealth are derived all the rights and faculties of him or them on whom sovereign power is conferred by the consent of the people assembled.[12]

But even in such a State—far removed from the type of sovereign power which Hobbes advocated, and with representative government—there is a valid distinction between the State and the people who compose it. Some, at least, of the Founding Fathers were thoroughly familiar with this distinction. This is why they advocated the addition of a Bill of Rights—to protect the people from the strong government they were establishing. For instance, when the Constitution emerged from the Convention of 1787, we hear Richard Henry Lee (1732–94) inquiring, "Where is the contract between the nation and the government? The Constitution makes no mention but of those who govern, and never speaks of the rights of the people who are governed."[13]

This distinction is vital as we come to study the relations of the State to the

Church. The State—at least from the American standpoint—should not control the Church, nor the Church the State, but both exist to serve the nation and the world in their respective fields. I add "and the world," for the day of extreme nationalism due to the overemphasis on the sovereign State is passing, just as extreme denominationalism is yielding to the larger ideal of the Kingdom of God. The idea that the State is God or a god cannot be accepted for a moment. The modern phrase "Church and State" with its variants will be discussed later when the separation of the powers is considered.[14]

(2) "FREEDOM" AND "LIBERTY"; "RELIGIOUS FREEDOM" AND "FREEDOM OF CONSCIENCE"; "LIBERALISM"

Freedom—A condition in which normally there is "liberation from slavery, imprisonment, or restraint," an "absence of repression or restraint." (Webster, *op. cit.*)

The word "normally" is added because it is recognized that any State may and should protect its citizens from the dangerous influence of the criminal, as well as from that debased form of liberty which degenerates into moral license, and because in times of crisis it may—if constitutional provisions are observed—temporarily restrict freedom so as to maintain its own safety. But even such occasional interference is fraught with danger. Furthermore, freedom never means exemption from the reasonable restraints of law, or doing what one wishes irrespective of the common interest.[15]

"Freedom" and "liberty" are for the purposes of our study virtually synonymous.

Liberty—State or fact of being a free person; exemption from subjection to the will of another claiming ownership [or absolute control] of the person [, thought,] or services; freedom, opposed to slavery, serfdom, bondage, subjection, etc. (Webster, *op. cit.*)

If the words in brackets—"or absolute control" after "ownership," and "thought," after the second occurrence of the word "person"—are added, the definition is reasonably satisfactory from our standpoint.

The word "freedom" is a particularly significant one—more so, in fact, than "liberty." Its origin goes back etymologically to the contacts of the home, where members of the household, as distinct from slaves, are connected with the head by ties of blood, and where rights are based on the true devotion and affection of kinship rather than on a merely formal legal status. This is brought out clearly by Murray's *English Dictionary on Historical Principles.*

FREEDOM—FREE, adj. and -DOM, suffix.

FREE—Com. Teut.: OE. *freo, frio, frig;* O. Teut. *frijo*—free: O.Aryn *priyo-* represented by Skr. *priya* dear, Welsh *rhydd* free, f. root *pri* to love.

> The primary sense of the adj. is 'dear'; the Germanic and Celtic sense comes of its having been applied as the distinctive epithet of those members of the household who were connected by ties of kindred with the head, as opposed to the slaves. The converse process of sense-development appears in Lat. liberi 'children,' literally the 'free' members of the household. . . .

Liberty, on the other hand, although coming from the Latin word *liber,* free, is too much associated with the clearly defined special liberties given by Church or State in the medieval world to certain favored groups. In this legal sense it is commonly an exceptional privilege granted to a subject by the sovereign power, rather than an inherent right. Freedom has generally no such limitation, and is considered the more generous and noble word. It is of course true that in common usage today the two terms are frequently employed as synonyms, although historically the distinction between Anglo-Saxon and Latin conceptions of human rights gives a less formal but deeper and more spontaneous connotation to the word from Anglo-Saxon.

The word "liberty" is more often misunderstood than "freedom," for it is confused with "liberalism" and sometimes with "libertinism." "Liberalism," as history has proved, although generally on the side of freedom, is not always so. Some who are falsely called "liberals," but more justly called "radicals," are so much interested in getting their reform objectives accomplished that they care little about the means, and treat with contempt those who disagree with them and who advocate different views. They forget the dictum of Herbert Spencer (1820–1903) that "every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty by every other man."[16] This condition, properly understood and safeguarded, is of vital importance for the preservation both of religion and government.

John Stuart Mill (1806–73) had a supreme belief in the dignity and worth of each individual and a strong faith in the idea of progress. These convictions served as a basis for his justification of liberty, believing, as he did, that liberty was essential for the development of individuality. No better statement has ever been made of the only proper restriction on liberty, namely, the bad effect that an individual's conduct may have on others, than that given by Mill in his essay *On Liberty* (1859). He said:

> . . . The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which

power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwse. To justify that, the conduct from which it is desired to deter him, must be calculated to produce evil to some one else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.

It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood. . . .[17]

This statement brings out clearly a point of view almost uniformly held in American jurisprudence—that the State has no right to interfere with religious convictions and their expression except when these result in acts that are injurious to others.

The most eminent English Roman Catholic historical scholar of modern times has thus defined the word: "By liberty I mean the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and majorities, custom and opinion." He even went so far as to say that "Liberty is not a means to a higher end, it is in itself the highest political end."[18]

Spinoza (1632–77) shared these latter views as to freedom being the political goal of man's striving.

> . . . the ultimate aim of government [he wrote] is not to rule, or restrain, by fear, nor to exact obedience, but contrariwise, to free every man from fear, that he may live in all possible security; in other words, to strengthen his natural right to exist and work without injury to himself or others. . . . In fact, the true aim of government is liberty.[19]

The liberty for which men have fought and died has been of many kinds—liberty of thought, speech, the press, assembly, action, and religion. It does not mean, and should not involve, either license or libertinism, and it behooves men in a free state not to use it to harm the State or its citizens.

But liberty, unless it is to degenerate into license, involves restraint and order. Unfortunately, some of its most vociferous advocates do not recognize

this. John Milton (1609–74) knew it well and expressed it in classic form when he wrote:

> License they mean when they cry Liberty;
> For who loves that, must first be wise and good.[20]

It should be conceived of not so much as freedom of personal action in any given set of circumstances, which may be subject to the control of law or the basic needs of the State, but rather in the sense of the ringing phrases of the Declaration of Independence, the great spiritual and civic freedoms of the Bill of Rights,[21] or of those referred to by President F. D. Roosevelt in his address to Congress, January 6, 1941. Then he advocated freedom of speech, "freedom of every person to worship God in his own way—everywhere in the world," freedom from want, and freedom from fear—in a word, "freedom under the guidance of God."[22] The close relation of religious freedom and other freedoms in this and many other statements is to be noted. Civil liberty is defined by Webster as "exemption from arbitrary interference with person, opinion, or property, on the part of the government under which one lives." Religious liberty is this and more. It involves entire individual freedom of conscience and thought as long as this does not result in acts injurious to others or to the State.

Religious freedom and *freedom of conscience.* "Religious freedom" or, as it was generally called a century ago, "liberty of conscience," is the phase of freedom which most interests us in this study. The attitude of our Federal and state constitutions toward it, and the interpretations and definitions of this freedom by our higher courts, will be discussed in later sections.[23] The adjective "religious" is accepted and used in its ordinary sense, meaning "of or pertaining to religion," while religion as commonly understood is, according to Webster:

> The outward act or form by which men indicate their recognition of the existence of a god or of gods having power over their destiny, to whom obedience, service, and honor are due; the feeling or expression of human life, fear, or awe of some superhuman and overruling power, whether by profession or belief, by observance of rites and ceremonies, or by the conduct of life; a system of faith and worship; a manifestation of piety. . . .

We have found no generally accepted definition of the phrase entirely adequate for our purposes in these volumes. It may be considered in general as involving liberty of conscience, of worship, of advocacy or change of belief and/or ecclesiastical affiliation, of observance of customs and ceremonies, and of organization for religious purposes (including religious instruction), without any civil disabilities or penalties, as long as the reasonable laws for the protection of government and the rights of other members of society are observed.

and the fair and equal treatment by the State of all law-abiding religious bodies and individuals. This may be put in another way by saying that in connection with religion, liberty or freedom means the unfettered right—as far as the civil law and its administration are concerned—to believe what one wishes, to worship God alone or with others as one sees fit, to be a member of any religious organization which is not illegal, or of none, and to follow such practices as one's religious convictions dictate, as long as these are not clearly inconsistent with the fundamental moral ideals, peace, and safety of the State.[24]

This does not mean that we should be indifferent to the importance of religious views, but rather that we should recognize the sacredness of convictions—a matter on which our Supreme Court, as guardian of constitutional rights, has laid great emphasis.[25] Furthermore, although the cause of religious freedom may have been aided by certain latitudinarian tendencies, it must not be considered as a movement against the importance of doctrine. It merely stands for the right of citizens, as such, to hold and practice such theological and ecclesiastical doctrines, or none, as mind and conscience may direct. The State must develop respect for the integrity of Protestant, Catholic, Jew, believer in other faiths, or agnostic, and protect them in holding such views and practicing such rights as they may think necessary or desirable, as long as the rights of others and the interests of the State are protected. This has been well expressed in a statement adopted by the Institute of International Law in 1929. Article 2 provides that

> It is the duty of every State to recognize for every individual the right to the free exercise, both public and private, of every faith, religion or belief of which the practice is not incompatible with public policy and good morals.[26]

Such liberty is essential to the Church, and was never more needed than it is today. Indeed, in a totalitarian state such as the Germany of World War II, the insistence by both Protestant and Roman Catholic groups on their liberty of thought and action in the field of religion has earned the high praise of independent non-Christian scholars, such as Professor Albert Einstein (1879–), who publicly stated during the war that about the only vestige remaining of the old freedom of Germany was that which the Church retained in the face of much suffering and persecution.

It is manifestly difficult for all religious bodies to unite on a definition of religious freedom; partly because there is a line of cleavage between the Roman Catholic Church and other communions, as the former officially claims that it is the sole authorized depository of religious truth and that consequently it has the right to be accorded special treatment in its attitude toward some matters connected with faith and morals; and partly because there is a similar divi-

sion between liberals and conservatives among Protestants, Jews, and other religious groups.

The words "freedom of religion" as used by Roman Catholics have theoretically a somewhat limited connotation. They often apply the expression as referring mainly to their right to accept Catholic truth—to worship and serve God as the Church teaches. As late as 1948 the official organ of the Jesuits in Rome took this view in an article which has been thus translated:

> The Roman Catholic Church, convinced, through its divine prerogatives, of being the only true church, must demand the right of freedom for herself alone, because such a right can only be possessed by truth, never by error. As to other religions, the Church will certainly never draw the sword, but she will require that by legitimate means they shall not be allowed to propagate false doctrine. Consequently, in a state where the the majority of the people are Catholic, the Church will require that legal existence be denied to error, and that if religious minorities actually exist, they shall have only a *de facto* existence without opportunity to spread their beliefs. . . . In some countries, Catholics will be obliged to ask full religious freedom for all, resigned at being forced to cohabitate where they alone should rightfully be allowed to live. But in doing this the Church does not renounce her thesis, which remains the most imperative of her laws, but merely adapts herself to *de facto* conditions, which must be taken into account in practical affairs. . . .[27]

Three impressive statements on the meaning of religious liberty which take this difficulty into account have appeared recently.

The first is from M. Searle Bates, *Religious Liberty: an Inquiry:*

> To some it is an utter individualism; to others the unhindered power of a mighty ecclesiastical system. To some it implies open competition of religious bodies; to others unity protected and undisturbed. To some it means the right to challenge a traditional religion which is the sanction for moral and social standards among a large majority of the members of a nation; to others it is the right to protect a cherished religion against modernism or foreign doctrines or atheism.[28]

The second is from the introduction to *The Religions of Democracy,* by three eminent and liberal-minded ministers of religion—Louis Finkelstein, a Jew, J. Elliot Ross, a Roman Catholic, and the late William Adams Brown, a Protestant:

> The American principle of religious liberty, expressed very tersely, is simply that the state should not forbid its citizens to do what their religion requires nor require them to do what their religion forbids. The principle assumes, of course, that what a citizen's religion forbids or requires does not involve the violation of the fundamental human rights of those who hold different convictions from his own.[29]

The third is from the message of the organizing meeting of the World Council of Churches in Amsterdam in 1948. Its statement as to what is involved in

religious freedom as understood by the non-Roman churches of all continents is authoritative:

> At the present time, churches should support every endeavor to secure within an international bill of rights adequate safeguards for freedom of religion and conscience, including rights of all men to hold and change their faith, to express it in worship and practice, to teach and persuade others, and to decide on the religious education of their children. They should press for freedom of speech and expression, of association and assembly, the rights of the family, of freedom from arbitrary arrest, as well as all those other rights which the true freedom of man requires.

The Assembly further adopted "a Declaration on Religious Liberty" which emphasized four points:

> 1. *Every person has the right to determine his own faith and creed.*
>
> 2. *Every person has the right to express his religious beliefs in worship, teaching and practice, and to proclaim the implications of his beliefs for relationships in a social or political community.*
>
> 3. *Every person has the right to associate with others and to organize with them for religious purposes.*
>
> 4. *Every religious organization, formed or maintained by action in accordance with the rights of individual persons, has the right to determine its policies and practices for the accomplishment of its chosen purposes.*
>
> . . . In order that these rights may be realized in social experience, the state must grant to religious organizations and their members the same rights which it grants to other organizations, including the right of self-government, of public meeting, of speech, of press and publication, of holding property, of collecting funds, of travel, of ingress and egress, and generally of administering their own affairs.
>
> The community has the right to require obedience to non-discriminatory laws passed in the interest of public order and well-being. In the exercise of its rights, a religious organization must respect the rights of other religious organizations and must safeguard the corporate and individual rights of the entire community.[30]

The American conception of religious freedom has been well expressed by a respected American Roman Catholic, the Honorable Alfred E. Smith (1873–1944), when he wrote: "I believe in absolute freedom of conscience for all men and in equality of all churches, all sects, and all beliefs before the law as a matter of right and not as a matter of favor."[31]

Some Catholic authorities might consider these interpretations too broad, but they represent the generally accepted position among enlightened English and American publicists of all creeds. That this conception when put into practice involves dangers, cannot be doubted. For instance, some Protestants carry their religious independence so far that there is sometimes a tendency toward the individual considering himself as "his own State and his own Church,"[32] but

this danger is probably less than that which has often shown itself in past centuries in the history of the Catholic Church, especially in some Latin countries, where it has ruthlessly suppressed independent religious movements.

Francesco Ruffini (1863–1934), author of a well-known historical work on Cavour, and recently Professor of Canon Law at the University of Turin, has written one of the most thoughtful and scholarly of works on the subject of *Religious Liberty*. He calls attention to the fact that the underlying idea is juridical rather than theological or philosophic, and that it may be defined negatively as the opposite of what the Index and the Inquisition stand for. Positively, he gives this definition:

> Religious liberty takes sides neither with faith nor with disbelief; but in that ceaseless struggle which has been waged between them since man first existed, and which will be continued, perhaps, as long as man exists, it stands absolutely apart. I do not say it stands above the conflict, since its aim is not so high; its object is not, as with faith, eternal salvation, nor, as with free thought, scientific truth. Its purpose is subordinate to these, and it is much more modest and far more practical. It consists in creating and maintaining in society such a condition of things that each individual may be able to pursue and in time to reach those two supreme ends, without other men, either separately or grouped in associations, or even personified in that supreme collectivity known as the State, being able to offer him the least impediment in pursuing those ends, or cause him the least damage on their account.[33]

It was Franklin who wrote: "There is not in any volume, the sacred writings excepted, a passage to be found better worth the veneration of freemen than this: 'Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.' "[34] Spiritual or religious freedom may conceivably exist without any large measure of political or economic liberty, but it is undoubtedly aided by them. Similarly, civil liberty may exist in a country where the members of an authoritarian church are not permitted by it that measure of religious freedom which involves actions or the expressions of religious belief that are not approved by ecclesiastical superiors. But, as we shall see later,[35] religious freedom has a profound influence on civil liberties and vice versa.

A respected Protestant leader, recently President of the Federal Council of Churches, the Reverend Bishop G. Bromley Oxnam (1891–) of the Methodist Church, who is much disturbed at what he understands to be the position of the Roman Catholic Church on religious liberty, has thus defined the subject:

> When we speak of religious liberty, specifically, we mean freedom of worship according to conscience and to bring up children in the faith of their parents; freedom for the individual to change his religion; freedom to preach, educate, pub-

lish, and carry on missionary activities; and freedom to organize with others, and to acquire and hold property for these purposes.[36]

Religious liberty is also not to be confused with ecclesiastical liberty. This latter implies the right of a Church, as distinct from an individual, to determine, without let or hindrance, its own policy. Sometimes the phrase is used in an extreme way to indicate the right of the members of the Roman Catholic or some other Church "to bring all the acts not only of their private but also of their public life into the fullest conformity with the precepts of that Church, and in such a manner as to have the State entirely and supinely subjected to demands of a religious character"; but fortunately this tendency has not been marked in American history.[37]

Liberty of conscience—the system of things in which a member of a state is permitted to follow without interference the dictates of his conscience in the profession of any religious creed or the exercise of any mode of worship. (*Oxford Dictionary*)

In general usage it is understood to permit the holding of such views about God, and man's relation to him and to his fellow men, as appeal to reason and conscience, as long as these do not result in acts detrimental to the fundamental interests of society. This phrase is found as early as 1580, after the Protestant Reformation had made itself felt in England. In 1601 we find a fine expression of it; namely, the right of all persons to "enjoy the libertie of their conscience."

Somewhat related to the liberties described in this section, and applying liberality of thought especially to theological and ecclesiastical matters in churches with strong European bonds, is *Americanism*. It has been thus authoritatively defined from the point of view of the Roman Catholic Church:

Theologically, an inchoate heresy condemned by Leo XIII in 1899. The stressing of active as opposed to "Passive" virtues, of the natural as opposed to the supernatural; an accommodation of Catholic truth to the American mind to facilitate conversions. Caused perturbation chiefly in France. Akin to German *Reformkatholizismus* and to Modernism.[38]

This use of the word must of course be differentiated from that which merely implies the goal toward which the foreign-born must be educated in American social and political conditions.

Liberalism. The words "liberal" and "liberalism" have played a large part in the development of modern theories of religious freedom and separation of Church and State. "Liberal" is defined by Webster's *Dictionary* as

Befitting, or worthy of, a man of free birth; . . . Not narrow or contracted in mind; broad-minded; catholic; free from bigotry. Not bound by authority, orthodox tenets, or established forms in political or religious philosophy; independent in opinion;

not conservative; inclined to welcome new ideas; friendly to suggestions, or experiments, of reform in the constitution or administration of government. . . .

Similarly, liberalism is defined as "liberal principles and theories; the principles of the liberals in politics or religion. . . ."

Political liberalism has recently been on the decline in most countries due to the growth of authoritarian ideologies, fascist on the one hand or Communist on the other. Religious liberalism was generally increasing until about the 1930's, when radicalism, especially in Russia, brought about some reaction.

(3) "TOLERATION" AND RELATED TERMS

"Toleration" is notably different from freedom, for it generally carries with it the idea that the person, opinion, or institution tolerated is a departure from what is normally right and is not considered entirely satisfactory from the standpoint of the powers that be. It is the "allowance of that which is not wholly approved."[39] Similarly, Murray's *English Dictionary* defines it in connection with religion, as "allowance (with or without limitations) by the ruling power, of the exercise of religion otherwise than in the form officially established or recognized." It is thus often used with the idea of concession, or of indifferentism, without recognition of the importance of allowing for differences of deep conviction. In contrast to complete "liberty," it "connotes that whatever immunity is enjoyed is regarded merely as a revocable concession rather than as a defensible right, implies not only the existence of an established (or favored) church but the denial of complete equality to certain or all of the dissenting religions."[40] As a Huguenot pastor who secured entire religious freedom from the States-General in France in 1789 stated: "It is not tolerance which I demand, it is liberty, that my country should accord it equally without distinction of rank, of birth or of religion."[41] Ruffini shares this view. He maintains that "the voice of the most strenuous defenders of liberty will be raised against it,"[42] and quotes Mirabeau and Lord Stanhope to support his position.

Mirabeau, in an address before the National Assembly, August 22, 1789, exclaimed: "The most unlimited religious freedom is in my eyes so holy a right that the word tolerance, which should emphasize this right, appears to me as in a certain degree tyranny, as it includes within itself the possibility that the authority which tolerates could also be intolerant."[42] Similarly, Vermeersch tells us that Lord Stanhope (1673–1721), minister of George I, warned the House of Lords: "There was a time when the Dissenters begged for toleration as a grace; now they ask for it as their right; but a time will come when the same people will scorn it as an insult."[43]

State toleration of different religions may be looked upon as a halfway house between an attitude by the State of ecclesiastical exclusiveness on the one hand,

and on the other, freedom of conscience and equality of different religious organizations before the law.

Interesting contemporary references to the fact that the Federal Constitution and Bill of Rights had gone beyond toleration are found in the address of the French Jews to the National Assembly, January 29, 1790, in which they said:

> The word *toleration,* which, after so many centuries and so many acts of intolerance, appeared to be a word full of humanity and reason, is no longer suitable to a nation that wishes to firmly place its rights upon the eternal foundations of justice. America, to which politics will owe so many useful lessons, has rejected the word toleration from its code, as a term tending to compromise individual liberty and to sacrifice certain classes of men to other classes. To tolerate is in fact, to suffer that which you could, if you wish, prevent and prohibit.[44]

Toleration is, of course, a step forward from *intolerance,* but only a step, for as Thomas Paine (1737–1809) wrote in 1791 with some truth and some exaggeration: "Toleration is not the opposite of intolerance, but is the counterfeit of it. Both are despotisms: the one assumes to itself the right of withholding liberty of conscience, the other of granting it."[45] This may be an extreme statement, but the limitations of toleration as a goal are evident. President Washington saw them clearly, for in a letter written to certain citizens of Newport in 1790, we find this expression of his ideal of liberty:

> It is now no more that toleration is spoken of as if it were by the indulgence of one class of people that another enjoyed the exercise of their inherent natural right. For happily the government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection shall demean themselves as good citizens in giving it on all occasions their effectual support.[46]

It should be added that sometimes today the word is used without this implication of superiority. For instance, the *Encyclopedia Britannica* defines it is as "The allowance of freedom of action or judgment to other people, the patient and unprejudiced endurance of dissent from one's own or the generally received course of view."[47] But with reference to religious views the word is not entirely satisfactory.

Tolerance does not imply any lack of conviction as to the nearer approach to truth of one's own views on religion or morals than of those of one's neighbor. It must never be confused with indifference or neutrality, which are generally unworthy attitudes in the approach to important questions. But tolerance should always include fairness, forbearance, and charity in discussing the religious, moral, or ecclesiastical views or actions of others with which one is not completely in sympathy, and a certain humility in the form of expression

of one's own opinions on controversial matters on which men of broad experience and education differ. It is the citizen's privilege and duty to uphold the truth as he sees it, and at times to proclaim it even when it is distasteful to others, but these obligations must be carried out with a scrupulous regard for facts and for the sacred rights of consciences of others. Furthermore, one should remember what the great Anglican preacher, Frederick W. Robertson, was fond of calling "the soul of goodness in things evil."[48]

Our higher courts are familiar with the distinction between religious liberty and toleration, knowing that toleration is inadequate and that religious liberty is inherent in the very idea of a human being, as incorporated in the Declaration of Independence, the Constitution, and the Bill of Rights. Here, for instance, is a quotation from an opinion of the Supreme Court of Ohio:

> We sometimes hear it said that all religions are tolerated in Ohio; but the expression is not strictly accurate; much less accurate is it to say, that one religion is a part of our law, and all others only tolerated. It is not by mere toleration that every individual here is protected in his belief or disbelief. He reposes not upon the leniency of government, or the liberality of any class or sect of men, but upon his natural, indefeasible rights of conscience, which, in the language of the Constitution, are beyond the control or interference of any human authority.[49]

De Ruggiero draws a distinction which it is well to keep in mind. He says:

> Whereas freedom of thought is a philosophic creed claiming an absolute and exclusive validity, religious liberty is merely a juridical principle concerned with the external relations of individuals and groups. . . . Religious liberty is violated by an ecclesiastical institution only when it attempts to enforce its intolerant prescriptions by invoking the sanctions of the civil power. . . .[50]

It should be remembered that religious tolerance does not necessarily prevent the positive assertion of belief in one's own church or creed. Intolerance develops only when the assertion represents a dogmatic conviction which holds one goal or method or belief with exclusive emphasis and is unwilling to recognize that others have equal rights to their different convictions. It becomes especially serious when it includes "active opposition to some other cause or creed." Then it is dangerous in the extreme to the body politic. Lord Macaulay, in his speech on "The State of Ireland" in the House of Commons February 19, 1844, addressing the ministers of the crown, whom he considered largely responsible for Ireland's troubles, referred to their calling up "the devil of religious intolerance, a devil more easily evoked than dismissed."

Three words which are the opposite of toleration deserve passing mention—intolerance, bigotry, and persecution. The most satisfactory definitions I have seen of them and of their relation to each other are given in a suggestive recent

book entitled *Intolerance*. The author, Professor Winfred Ernest Garrison (1874-) of the University of Chicago, thus defines them:

> We have, then, three terms in an ascending scale of harshness. *Intolerance* is the quality of minds closed to influences from those who differ and disposed to limit their liberty or to visit them with the tokens of displeasure. *Bigotry* is intolerance raised to a higher power, fortified by fanatical devotion to a cause not supported by reason, and emotionalized by a feeling of active hostility or hatred toward those who are of a different way of thinking. . . . *Persecution* is intolerance expressing itself in overt acts to the detriment of the life, liberty, property, or peace of the victim.[51]

The steps upward in the State's dealing with persecuted minorities seem historically to have followed generally some such order as this: death, attempted suppression by force with serious penalties, imprisonment, expropriation of land and property, banishment, isolation, social pressure for conformity, limited toleration as a favor but not as a right, full toleration with many guaranteed civil rights, and finally freedom.

As to the various forms of persecution, we shall find that historically in this country such persecutions as we have had have been due mainly to fear that views held by the offensive groups were dangerous to the State or the cause of true religion. The trouble is that a given Church or political group sets itself up as judge of what is true and what is dangerous, and wishes others either to conform to its convictions, or at least to give up promoting the views that seem dangerous. But fortunately there has been a steadily growing tendency to make a clear distinction between punishment for crime and punishment for opinion —the latter not being considered now as part of the function of the State.

Intolerance, bigotry, and persecution of course show themselves in many fields—social, political, industrial—but when they are related to religion they are particularly dangerous, as religious convictions are held with such tenacity and go to the heart of things. This dogmatic emphasis is permissible as long as men do not feel that it is their right and duty to force others to their way of thinking. The tolerant man may hold his truth as strongly as the intolerant, but he realizes that persuasion is the only legitimate method of attempting conversion—using this word both in its broad and narrow senses.

Professor Garrison lays special emphasis on the evil of intolerance in the form of the attempt to exercise "social control over the variations and divergences of individuals or minority groups from the approved patterns." He enumerates as the major means by which majorities try to force their will: general social pressure, police power with penalties, civil disabilities imposed by the State, spiritual terrors inveighed by a dominant Church, and limitations on the rights of worship; while the intolerance of minorities and individuals shows itself

mainly by the exclusiveness of the churches, social discrimination, political discrimination.[52] That this analysis has much truth will be evident as we study the history of Church-State relations in this country.

(4) "SEPARATION OF CHURCH AND STATE"; "ESTABLISHMENT" AND "DISESTABLISHMENT"

It would be interesting to trace the history both of the idea behind the phrase "Church and State," and of the phrase itself. The origin of the idea, as far as Christian civilization is concerned, may probably be found in the saying of Jesus recorded in St. Mark's Gospel (13.17) "Render to Caesar the things that are Caesar's, and to God the things that are God's." That saying laid the foundation on which the theory of the separation of Church and State was to be developed in the course of the centuries. For about three hundred years, until Constantine recognized Christianity as an "allowed religion" in 313 and Theodosius made Christianity the religion of the Roman Empire in 380, the relation between the two powers was mainly one of antagonism. The struggle had been long and bitter. Then came a period of fourteen hundred years, until the American and French Revolutions, when the relationship was almost without interruption in Western Christendom one combining co-operation between the two powers in their own spheres, with a struggle for supremacy between pope and emperor. This had its ups and downs, and reached a climax in 1077, when at Canossa Pope Gregory VII (Hildebrand) forced Emperor Henry IV to do penance.

Finally, for the past century and a half, due to causes growing out of the Renaissance, the Reformation, and the rise of modern democracy, Church and State have been increasingly separated. This has been effected either with much mutual animosity, as in some Latin American countries, in Nazi Germany, and in Soviet Russia prior to her joining the United Nations in World War II, or with mutual consent and good will, as in the United States. The process is a twofold one, involving the freeing of the State from the control of the Church, and the freeing of the Church from the control of the State—at least in matters of belief and administration.

The relation between the "two powers" has had various designations—"Church and Empire," *"Imperium et Sacerdotium,"* "Empire and Papacy," "Throne and Altar," "Kirk and King," "Church and State." The last-named—now the most common—came into general use in the seventeenth and eighteenth centuries, going back for its origin to the controversies regarding the Church of England which came to a head in the middle of the seventeenth century. In this connection a study of the term, and of similar words and phrases in the *Oxford New English Dictionary,* is illuminating. For example, the first clear

use of the word "Separatist" for those who had cast off the Church of England with its State connection, is in 1608, while "Separatism" for a religious group having the principles and practice of Separatists, is found in 1628. Somewhat later we find a quaint reference to the fact that a nation may include "an Establishment, a Limited Toleration, and a discreet Connivance," etc. In 1660 we hear of "the Church of England as it is established by law," and in 1674 we have definite reference to the term "Church and State." This also appears in this country at the turn of the century. The laws of Maryland, for example, refer in 1694 to "Instructing our youth in the orthodox, preserving them from the infection of heterodox tenets and fitting them for service of Church and State."[53] Similarly, the charter of the "Collegiate School of Connecticut," later Yale College, granted by the Governor and Company of the colony in 1701, refers to instructing youth "in the Arts & Sciences who through the blessing of Almighty God may be fitted for Publick employment both in Church & Civil State." Bishop Berkeley thirty years later refers to "Church and State"; and the phrase now begins to be frequently found. Indeed, it came to be the usual designation of the two great powers—political and ecclesiastical—each working in its own sphere. But there is little if any mention in this country of the term "separation of," or "between," "Church and State," until it was used by Thomas Jefferson in his letter to the Danbury Baptists in 1802.[54] Of course Roger Williams[55] and other advocates of the cause of religious freedom had emphasized the underlying idea much earlier. The phrase became common in England only in the middle of the nineteenth century. Edward Miall (1809–81), one of the founders of the British Anti State-Church Association, later known as the Liberation Society, speaks in 1841 of "the entire separation of Church and State," while John Ruskin (1819–1900), in *The Stones of Venice,* writing in 1851, refers to "what we ridiculously call a separation of 'Church and State.'"

Probably the public debates in Virginia from the time of the Declaration of Rights in 1776 to the enactment of the statute for religious freedom in 1787, and including the long discussions of the religious assessment plan and Madison's "Memorial and Remonstrance" [V, 3, (4), (5)] did more than anything else prior to the debates on the First Amendment to bring before the American public the fundamental ideas of a mutually friendly Church-State separation.

This phrase, now so well known in constitutional discussion, does not actually appear in the Constitution of the United States, or in that of any of the states except Utah, but the idea for which it stands is found both in the constitutional provisions against religious tests, and in the words of the First Amendment, which states that "Congress shall make no law respecting an establishment of religion. . . ." These forbid a Church established by law, and thereby

require the separation of Church and State. They do not prevent such informal types of co-operation between the two powers as are within the law in the interest of the public, but there can be no interlocking of institutional functions.[56]

Of scores of recent descriptions of the real meaning of the separation of the two "powers," I quote first one from a distinguished Italian scholar, Don Luigi Sturzo (1870–), who, speaking from a liberal Roman Catholic standpoint of the separate functions of Church and State, and at the same time of their interrelations, says:

> . . . The Christian Church has polarized this dualism, it has made it lasting and permanent and has given it the light of a supernatural truth: "Render unto Caesar the things that are Caesar's, and unto God the things that are God's." Every attempt to overstep such limits, from either side, has violated the laws of nature and those of Revelation. The duality does not mean dualism, but it may become a dualism. . . . The duality postulates a synthesis; the dualism, instead, is a more or less transient moment of strife. . . .[57]

It is this separation, through constitutional enactment, statute, and public opinion, between Church and State that has, in the opinion of most thoughtful American publicists, become the cornerstone of our religious freedom in the United States. Sometimes a foreign scholar or observer is able to see things of this character with unusual clarity and to express them with fresh suggestiveness. So let us quote the opinion of one of the most eminent modern European writers on religious liberty—Professor Francesco Ruffini (1863–1934):

> . . . And thus it is that *religious liberty* and *separatism* have become in America two terms which, ideally, historically, and practically, are inseparable. Such is the theory which is defended by those European writers who took upon themselves to extol the American system of *separatism* as against the European system of *jurisdictionalism* or Erastianism.[58]

The phrase "separation of Church and State" is not approved by Catholic authority unless its meaning is limited by definition. It was specifically condemned by Pius IX in his "Syllabus of Errors" as one of the "principal errors of our time," and though the Church has adjusted itself to it as a *modus vivendi* in this country and in certain other democracies, it theoretically cannot approve of it as an ideal.

A definition from the point of view of one of the leading Protestant Christian publicists of our time is that of Dr. Charles C. Morrison (1874–), long the editor of the *Christian Century:*

> By the separation of church and state is meant the constitutional provision which forbids the making of any law, and therefore the taking of any executive action, that

involves the interlocking of the official functions of the state with the official or institutional functions of any church.[59]

In applying this definition to the principal problems of our time he feels that it rules out Federal funds for bus transportation or any other contributions to parochial or denominational schools, released-time instruction by the churches in public school buildings, diplomatic representation at the Vatican, chaplains in the armed forces when employed by the government. On the other hand, he does not feel that his definition affects vaccination and other public health services for pupils in parochial schools, devotional Bible reading and prayer in public schools, the study of religion as an integral part of the public school curriculum under the regular instruction of regular public school teachers, prayers at the opening of Congress, etc.

The meaning of the phrase as interpreted by the Supreme Court has been construed in the *dicta* of the Everson and McCollum cases discussed later.[60] This partial attempt at a definition has been seriously criticized as inaccurate by some constitutional authorities, such as Professor Corwin, and in an able book by Professor J. M. O'Neill of Brooklyn College, *Religion and Education under the Constitution*. Their contention is that the prohibition was intended by its framers to refer only to the establishment of a national religion, and that the separation of Church and State has been made entirely too rigid by the court's decision.

The word "Establishment," referring to the ecclesiastical system established in England, first appears in 1731, and "disestablishment" three-quarters of a century later. The former "implies the existence of some definite and distinctive relation between the state and a religious society (or conceivably more than one) other than that which is shared in by other societies of the same general character."[61] No approach to such establishment has ever long existed under the United States government, being forbidden under the Federal Constitution. Most colonial establishments were done away with by state constitutions in the Revolutionary period, but some, howbeit in a rather mild form, lasted in the states into the early nineteenth century—the latest survival being in Massachusetts (1833).[62] Similarly, Mormonism, whose Church-State connection was at one time threatening, yielded to public opinion on this as also on the polygamy issue.

In England, the Church of England is still "established" by law, Presbyterians and other Christian religious groups being "Nonconformists" or Dissenters, while in Scotland, under the same sovereign, the Presbyterian Church is established and Anglicans are the Dissenters, although given entire freedom and tolerated.

Another form of expression indicating the difference between the established religion and other religious groups is that of "conformity" and "nonconformity" or "dissent." This usage became specially prevalent in England after the Reformation. We must remember that when transferred to New England it implied exactly the opposite from what it had meant in the mother country—the old dissenting Puritan Independents being the recognized "Conformers" and the Anglicans the "Dissenters."

The movement for separation, as we shall see in the course of our discussion, was aided by many factors, especially religious conviction, political expediency, philosophical theory, and the ideas of natural law as opposed to those of canon law.

(5) "SECULARISM" AND "SECULARIST"; "CLERICALISM" AND "ANTICLERICALISM"

Secularism—State or quality of being secular; a secular spirit; secularity. The tenets or principles of secularists. (Webster, *op. cit.*)

The exclusion of God and religion from life. A this-worldly attitude which sought the foundations of morality and religion in nature alone. Associated with Industrialism, Liberalism, Materialism, Nationalism, Science, and the vogue of simple Evolution.

An authoritative Roman Catholic definition follows:

The secularization of Church property and the Lay school in France are manifestations of the spirit of Secularism.[63]

Webster's New International Dictionary gives the following definitions which would be generally accepted in this country:

1. A system of social ethics based upon a doctrine advanced by G. J. Holyoake (1817–1906) that ethical standards and conduct should be determined exclusively with reference to the present life and social well-being.

2. Any view of life, education, etc., or any policy or program referring to such, based on the premise that religion and religious considerations, as of God and a future life, should be ignored or excluded.

In America the word is used by those who wish not only the continuance of the divorce of the State and the Church, and in opposition to ecclesiasticism, but also for the divorce of the State from all religion, even through indirect sanction. It frequently becomes in practice a world outlook that has some of the features of a religion without belief in a deity, and in its less worthy representatives develops as intolerant and dogmatic a spirit as it seeks to overthrow.

Secularism generally implies the disregard of religion and of other-worldliness as an important consideration in life, the abstention by the State and its various agencies from any recognition of religion, and emphasis on the things of this world as of supreme value, often denying that human life has any

spiritual or eternal significance. It disregards almost entirely the first commandment, and is inclined to consider scientific and economic values as much more significant than those that are humanistic and spiritual. It sometimes asserts that as far as personal religion alone is concerned it is not antagonistic, and that its opposition is merely to those forms associated with clericalism and dogmatism. This is occasionally true, but it generally appears in history as identified with atheism or agnosticism and with opposition or indifference to the work of the Church.

Such secularism, long known on the continent of Europe and in some Roman Catholic countries in South America, has appeared prominently in North America only in recent years. It has shown itself in opposition to government chaplaincies, to the exemption from taxation of churches, to Sunday observance laws, to the inclusion of religion, either as devotion or as an object of study and whether required or voluntary, in public schools. It tends to magnify the State and to make it a Leviathan, as resulted during World War II in Germany, Italy, Japan, and Russia, leaving little place even for the encouragement of voluntary association of self-governing religious groups. The enormous development of science in recent years as a dominant consideration in life, with its potentialities for evil as well as for good, and the tendency, in the interest of Church-State separation and of meeting the large-scale demands of the public, to secularize public education, hospitals, and charities, have resulted in secularism making considerable headway in this country to the detriment of the churches, and especially of the former dominant Protestantism.

Secularist—One who theoretically rejects every form of religious faith and worship, and accepts only the facts and influences derived from the present life; also, one who believes that education and other civil matters should be managed without introducing any religious element. (Webster, *op. cit.*)

Secularists are frequently unsympathetic with organized religion, and wish a State that is not only "laic" but that leaves religion severely alone. They sometimes express sympathy with what they consider pure Christianity, but are opposed to all theological dogmatism and ecclesiasticism, believing that these may prove dangerous to the State. In view of the friendly relation of the State toward the Church in the United States it would seem more appropriate to refer to this country as a lay rather than a secular state.

Historical factors growing out of early colonization, the absence of political discussions over concordats, the fact that Freemasonry in the United States is not antireligious, and the very small aggressive atheist group, have helped to keep America free from the unfortunate form of the Church-State controversy known as "clericalism" which has so long plagued much of the continent of Europe. The nearest approach to it was in Protestant and Puritan New Eng-

land. As a result two words much used in Europe are not common in North America outside of Mexico and Quebec. These are "clericalism" and "anti-clericalism"—both products of intolerance. They are not used because the conditions here differ radically from those abroad, due primarily to two factors: the constitutional separation of Church and State; and the fact that Roman Catholics (as distinct from Protestants) represent a minority instead of a large majority, as is the case in all Latin countries. Priests who take their political orders from the hierarchy, as has frequently been the case, for instance, in Spain, or who support a clerical party, as in Germany, are fortunately in a small minority in this country even in their own ministry; and since the settlement of the acute political phase of the Irish question even this small minority has been less conspicuous. When Protestant tradition is strong, and on the whole appreciative of the contribution of Catholics to national life, and there is no established Church, and the Roman Catholic Church has adjusted itself to a democratic form of government, the "clerical" issue does not arise in many serious forms.

Somewhat similarly, there is no such discussion in the United States of "clerical disabilities" as was frequent in most parts of Europe in the nineteenth century, because such disabilities do not exist. The Catholic priest, the Anglican clergyman, the Jewish rabbi, the Protestant minister, and the representative of any and every other responsible, law-abiding cult, have the same legal status, the same legal privileges; and these are also the same as those of other citizens, with certain rights added, such as the right to perform marriages, and certain exemptions, such as from military service.[64]

As to two other terms, "heresy" and "blasphemy," which have played their part in Church–State conflicts in Europe, only a word need be said. The former is no longer recognized by the State, which in this country "knows no heresy," although it played its part in public conflicts in colonial times, as we shall see particularly in dealing with Anne Hutchinson.[65] The Roman Catholic view of heresy continues to have some slight State bearings in its relation to such matters as the marriage of Catholics and non-Catholics, the legitimizing of giving birth control information by physicians, and the education of Catholic children in non-Catholic schools. These will be dealt with later.[66]

As to blasphemy, it is still forbidden by law in some states, cases occasionally coming before the courts, but, as we shall see, such cases are much less frequent than formerly.[67]

(6) NOTE ON CONCORDATS

In the United States there never has been a concordat, although Benjamin Franklin was approached as to the possibility of making one in the early days

of the republic and stated that it would be impossible.[68] He was of course right; because a government that was essentially secular in legal form and that provided for constitutional separation of Church and State could not make any agreement with a religious power, whether it was the papacy or any other. There have, however, been many concordats with Latin American countries, being attempts on the part of the Roman Catholic Church to regulate the relation of the Church to the State, the appointment of bishops, and similar matters.

The word concordat plays, however, such a large part in historical discussions of Church–State relations and still represents a vital issue in so many countries that something must be said about it, as without an understanding of its meaning and purpose the full significance of our American policy of "separation," and its contrast to the situation in many other democratic states, cannot be understood. The word is defined by the *Catholic Dictionary* as "an agreement between the Holy See and a civil government on spiritual matters in dispute or likely to be in dispute." Among the most famous have been the Concordat of Worms in 1122, confirmed by the First Lateran Council, by which the investiture controversy between the pope and the emperor was settled; the Concordat of 1801, by which Napoleon Bonaparte consented to the re-establishment of the Catholic Church in France with bishops nominated by the French government, an arrangement which lasted until 1905; and the Lateran agreement with Italy in 1929, by which an understanding was reached on religious matters having a temporal relationship, such as the holding of church property, arrangements concerning marriage, the legal immunity of priests, and religious instruction in public schools.

Concordats are generally designed to give the Roman Catholic Church a specially favored, and sometimes an exclusive, official status. The most liberal I have noted, and one indicating a considerable change in policy, was signed in Rome, May 7, 1940, between the Holy See and Portugal. This is significant, for, although in keeping with the national tradition it recognizes Catholicism as the official religion of the State, yet at the same time it guarantees full religious freedom. On this account, and as the Church becomes self-supporting outside of the mission field, receiving no financial aid from the Vatican, and as the separate fields of the Church and State, which should not be transgressed, are indicated,[69] it has been referred to as a step forward for a definitely Catholic country, "a concordat of separation."

It will be noted that even so liberal a concordat as this would be quite impossible in the United States, where all religious bodies observing the law are treated exactly the same by the government.

Section 3. THE IMPORTANCE OF THE SUBJECT, AND THE DIFFERENCE BETWEEN RELIGIOUS FREEDOM ON PRINCIPLE AND FOR EXPEDIENCY

It is hard to overestimate the importance of the subect to be discussed in this work, for the Church and the State are two of the agencies which most profoundly affect human progress. It was my privilege to hear the remarkable address delivered by President Nicholas Murray Butler (1862–1947) of Columbia University, in 1928, at the dedication of the University of Louvain Library. He stated that next to the family, the Church, the State, and the university are the three institutions best fitted to influence the progress of the world. I believe that he was essentially right, although probably we should have to include other forms of education along with the university in any adequate statement. But it happens that the Church and the State (or Empire) are historically the two institutions which mainly created the university—although some universities developed by groups of masters and students merely secured charters from one of the two powers—and they are, consequently, the more fundamental.

In the charter of Yale College, adopted in 1701, it is stated that the institution was established to fit youth "for Publick employment in Church & Civil State." The two are supplementary, and neither can exist effectively without the other. This has been so clear that historically they were generally organically connected, but it has been found in modern times that their separation results in the greater efficiency of each, without the constant friction which the old arrangement created. The State provides law, order, administration, justice; the Church provides a philosophy of life, ethical standards, spiritual ideals and inspiration; while both—supplementing the basic influence of the family—have an important part to play in the field of education. We shall consider in the next section the historical significance of the American solution of the Church–State problem in relation to previous attempts. Here it is sufficient to point out that one of the truly great gains in America has been through the guaranteeing of religious freedom.

The New York Supreme Court, in a well known case, said of the principle of religious freedom that it "has always been regarded by the American people as the very heart beat of its national life."[70] This would be difficult to maintain in a democracy without constitutional separation of Church and State. Professor Francis Lieber (1800–72), one of the ablest of American constitutional authorities, wrote nearly a century ago: "It belongs to American liberty

to separate entirely from the political government the institution which has for its object the support and diffusion of religion."[71]

It seems well that we should make clear at the outset of this study our conviction that the significance of American religious freedom is in this entire separation of political and religious functions. The separation and our freedom are intimately related; but this does not prevent a sympathetic mutual relation between the two, as long as the word "Church" is interpreted sufficiently broadly to include all organized religious groups which recognize the law of the land. It is this complete legal separation between the two "powers" in the State and in all its subdivisions, as well as the friendly feeling existing between them, and the large amount of co-operation among the various religious denominations, that make the American situation unique in history. And yet it has received too little attention abroad, and its constitutional basis, especially that provided by the Bill of Rights and its broadening by the Fourteenth Amendment, is inadequately recognized at home. An example of the former is that the twenty-eight volumes of the *Encyclopedia Britannica,* if the index is complete and if a reading of the articles most nearly bearing on the subject is a fair test, scarcely mention the constitutional basis of religious freedom in the United States—one of the nation's major contributions to the world. Similarly, the leading English writers on the general subject of the development of guarantees of freedom of thought and its expression, such as Lecky, Bury, and Acton, give slight attention to the subject. And this relative indifference to the great significance of America's religious freedom based on constitutional guarantees is characteristic of many other writers on American history and government from abroad. But fortunately Luzzati, Ruffini, and other Italian publicists show themselves conscious of America's unique contribution, as do also some French and English publicists, notably James Bryce (1838–1922). He not only has admirable chapters in *The American Commonwealth* on "The Churches and the Clergy" and the "Influence of Religion," but also deals with the whole subject in an adequate way on the basis of conditions half a century ago, calling attention to the constitutional foundations. One paragraph shows clearly his views on the significance of Church-State separation in this country.

> In examining the National Government and the State Governments we have never once had occasion to advert to any ecclesiastical body or question, because with such matters government has in the United States absolutely nothing to do. . . . There is no Established Church. All religious bodies are absolutely equal before the law, and unrecognized by the law, except as voluntary associations of private citizens.[72]

This is followed later in the chapter by the statement that "the absence of State

interference in matters of religion is one of the most striking differences between all the European countries on the one hand and the United States on the other. . . ."[73] These quotations show that the author, with his unsurpassed knowledge of such matters, understood fully the significance of the American experiment, which he recognizes as excluding any "legally established religion" without preventing in actual development the place of Christianity as "the national religion."[74]

Religious freedom has been supported by statesmen for two major reasons: principle and expediency. The same is true of democracy, and even of morality and religion. There are some who advocate great ideals because of profound conviction as to their essential truth, believing that they are in harmony with the laws of God; others support the same ideals from a belief that they are socially advisable or necessary to meet a given human situation. The former are always sincere; the latter are frequently equally so, but their supporters include some who are lip-servers only. In the history of the separation of Church and State in the United States, with its closely connected religious freedom, leaders such as Roger Williams and William Penn[75] have been mainly of the former group, although some of their effective colleagues among the statesmen, such as Thomas Jefferson and James Madison,[76] have combined with conviction based on the natural law or the Christian ideal of the sacredness of personality, a strong feeling that in a democracy such as ours with its many-colored inherited religious traditions, opinions, and practices, any other plan would be impracticable. The thinking of a century and a half, with the new light thrown on the subject by Biblical research and comparative religions on the one hand, and by the experience of American and foreign social and political life on the other, has only increased the conviction that the framers of our Constitution builded even better than they knew. The great principle of constitutional religious freedom now seems essential for our nation, and almost equally so for any other nation which wishes to provide a congenial home for men and women of strong convictions, and to combine in the interest of security and progress a large measure of national unity with stimulating differences of opinion. It is conceded by historians that the guarantees of the Constitution providing for freedom of conscience and worship and the outlawing of a national state religion have been among the most important factors in the development of this country, and that although they have contributed to the founding of an embarrassing number of sects, they have added much to the vitality of American religious life. It is perhaps not so generally recognized that this success has been largely due to the fact that our religious freedom is based primarily on the conviction that it is not merely expedient but that it represents an inherent element among the rights of man as endowed by his Maker.

Section 4. HISTORICAL SIGNIFICANCE OF THE AMERICAN SOLUTION OF THE CHURCH-STATE PROBLEM IN RELATION TO PREVIOUS ATTEMPTS

Our religious freedom, which has resulted in "free religions in a sovereign state"[77]—to use the fine phrase which Luigi Luzzatti (1841–1927), former Italian premier and devoted exponent of religious freedom, has built up on the basis of Mazzini's "free church in a free state"—is so much taken for granted that we are apt to overlook its significance. Perhaps this will appear more clearly if we give a little attention to two fundamental considerations:

First, that the guarantee of entire religious freedom is in some respects the most notable feature of American constitutions. This conviction is impressively stated by the late David Dudley Field (1805–94). In describing "American Progress in Jurisprudence," he said that

> the greatest achievement ever made in the cause of human progress is the total and final separation of church and state. If we had nothing else to boast of, we could lay claim with justice that first among the nations we of this country made it an article of organic law that the relations between man and his Maker were a private concern, into which other men have no right to intrude. To measure the stride thus made for the Emancipation of the race, we have only to look back over the centuries that have gone before us, and recall the dreadful persecutions in the name of religion that have filled the world.[78]

Second, that the resulting religious freedom existing with only slight interruptions over a long period in all parts of a large and independent nation, along with friendliness to the general cause of religion and without financial subsidies to any church, is unique in history.

The nearest approaches are both very ancient and very modern, as the State–Church idea dominated the intervening medieval world. For the first we must go back two thousand years to India. King Asoka (Piyadasi, d.*c.* 225 B.C.) was converted to Buddhism about the middle of the third century before Christ. His *Laws* are among the most inspiring that history records on the subject of religious freedom:

> King Piyadasi, dear to the gods, honors all sects; the ascetics (hermits) or those who dwell at home; he honors them with charity and in other ways. But the king, dear to the gods, attributes less importance to this charity and these honors than to the vow of seeing the reign of virtue, which constitutes the essential part of them. For all these virtues there is a common source, modesty of speech. That is to say, one must not exalt one's creed, discrediting all others; nor must one degrade these others without legitimate reasons. One must on the contrary render to other creeds the honor befitting them.

Acting thus, we contribute to the progress of our sect (or creed) by serving the others. Acting otherwise, we harm our own faith, bringing discredit upon the others. He who exalts his own belief, discrediting all others, does so surely to obey his religion with the intention of making a display of it. But, behaving thus, he gives it the hardest blows. And for this reason concord is good only in so far as all listen to each other's creeds and love to listen to them. It is the desire of the king, dear to the gods, that all creeds be illumined and that they profess pure doctrines.[79]

This statement is taken from one of the pillars which he erected containing his edicts and which are the basis of most of our knowledge of him. Contrast its generous spirit toward different faiths with that of the tradition of ancient Greece a century earlier. Even Plato (*c.* 427–*c.* 347 B.C.) in his *Laws* took the ground that all citizens must accept the State religion. He punishes those who will not adhere to it with five years' imprisonment, during which time they must listen each day to a sermon which will bring them back to the true faith! The atheist who does not believe in the gods of Greece and tries to seduce believers is to be placed in a dungeon and denied regular burial.

The nearest modern parallel to religious freedom in the United States is that of some members of the British Commonwealth of Nations, such as Canada[80] and Australia, and contemporary China, all of which have been much influenced by our example.[81]

To justify the statement as to the historic significance of the American solution of the problem it is necessary to consider preceding Church-State relations. Christianity and the State have from the earliest days come into relations involving conflict, entanglement, an armed truce, active co-operation, or sympathetic mutual understanding. The American plan is perhaps midway between the last two. And here it is worth recording at the outset of our study that Church and State separation and religious freedom in the United States have not only contributed to a friendly relation between these powers, but have also contributed to a similar relation between religious bodies. This is shown by the large degree of co-operation in social-welfare activities, and even in many cases by a friendly attitude of mutual sympathy in advancing fundamental religious progress, as, for example, in the case of our army and navy chaplaincies.[82] This is in keeping with the first reference to religion in any charter or constitution in the regions which later became the United States, for the charter granted to Sir Walter Raleigh in 1584 refers to the purpose of the founders of Virginia "To determine to live together in Christian peace . . ."[83]— a statement which in its position of chronological priority is very prophetic. I am surprised that I have never noted in previous studies any reference to its significance.

Christianity itself can be understood only when the relations of its Founder

and His Church to the State are remembered.[84] For instance, it was the State which sealed His death; the State, which in the interest of harmony, summoned the Council of Nicea to determine the Christian creed, and considerably influenced its decisions; and the State which initiated the Reformation of the English Church under Henry VIII. On the other hand, the Church has in the course of nineteen centuries profoundly affected the policy of the State. The care for public education over large stretches of time and territory; the insistence on "the truce of God" in the Middle Ages; the emphasis on the abolition of slavery and on native rights in Africa; the abolition of the twelve-hour day in the American steel industry; the influence of the non-Conformist conscience on social reform in England—these are a few cases taken almost at random to show how the Church has affected public opinion and the policy of the State.

This mutual influence, although frequently abused, has much to commend it if influence does not degenerate into control, in which case it is always dangerous. As a result, historically the State has had at times to be liberated from the Church, and at other times the Church has had to be liberated from the State.

In general, up to and including the adoption of the American Constitution in 1788, the relations of Church and State in the history of Christianity[85] were of seven major types, divided roughly chronologically into early and modern attempted solutions. It is well to study them in these two periods—to know the background of our Church-State relations, "in order . . . that yesterday may not parallel today, and today may not parallel to-morrow."[86]

(1) EARLY SOLUTIONS ATTEMPTED—IMPERIAL DOMINATION; CHURCH-STATE ALLIANCE; ECCLESIASTICAL DOMINATION; AND ECCLESIASTICAL STATE PLANS

(a) The *Imperial Domination plan* prevailed, as far as Christianity was concerned, until Constantine the Great (288?-327) in 313 admitted it into the group of authorized State religions. Up to this time there had been entire separation between Church and State, but the Church was looked upon with ill favor and persecuted by the Roman Empire, until Galerius' decree of toleration issued in 311, the year of his death. In spite of Saint Paul's injunction to obey "the higher powers" which are "ordained of God,"[87] the general tendency during the period of persecution was to follow the Book of Revelation in considering the Emperor as Antichrist. Had the Christians been willing to worship him there would have been little or no persecution. It must be conceded, however, that in the days of the republic and of the early empire a considerable measure of toleration was granted to conquered peoples.

(b) The *Church-State Alliance plan,* sometimes referred to as the "marriage

of Church and State," had its most effective early spokesman in Saint Augustine (354-430), whose *De Civitate Dei* (413-26) was long considered the classic on the subject. His view was that the two powers were essentially autonomous, correlative agencies, each sovereign in its own field, and each under obligation to give suitable aid to the other—both being ordained of God. In carrying out this theory the pope and the emperor were really coequal in their respective fields.[88] This plan was in force, roughly speaking, in the fifth and sixth centuries, although when Justinian the Great was emperor, 527-65, an attempt was made to interfere with Church independence and to subordinate the pope to the emperor in some matters. The Church could not permit this, as of the "two cities," the heavenly and the earthly, the first—"the city of God which remaineth" —was the most important institution in the world, deserving all civic honors.

(c) The *Ecclesiastical Domination plan* of the Middle Ages began to be attempted under Gregory the Great (*c.* 540-604), pope from 590 to 604. Here the Church under the leadership of the papacy—"the residuary legatee of the Roman Empire"—was the main bulwark of civilization after the overrunning of Western Europe by the barbarians and the consequent weakening of the power of the State. It considered itself supreme, and through its clergy—in addition to its religious work—increasingly controlled education, social reform, health, diplomacy, and other activities which have since come under the aegis of the State. In most organized social and civic matters the Church worked through guilds—of bankers, merchants, artists, artisans, teachers, etc. These provided an effective training in self-government under religious auspices. Although the State and the Church still had to a large extent their separate functions and battled for supremacy, the Church, under the lead of the pope, frequently claimed the superior position, and had an influence on government that was often decisive and always important. The humiliation of Emperor Henry IV before Pope Gregory VII (Hildebrand) at Canossa in 1077 was the climax of this influence, but it was retained as a fairly effective ideal for about two centuries thereafter. Indeed, even Boniface VIII, as late as his jubilee in 1300, practically claimed that he was both Caesar and pope. "During the Jubilee he had displayed himself alternately in the splendid habiliments of the Pope and those of the Emperor, with the crown on his head, the sceptre in his hand, and the Imperial sandals on his feet; he had two swords borne before him, and thus openly assumed the full temporal as well as spiritual supremacy over mankind."[89] The rising power of the State, and especially of France, was, before the end of his reign, to give a blow to this conception of the two swords—one, the higher, borne by the Church, the other for the Church—from which it never completely recovered,[90] but the law of the Church—canon law—continued a great force. Even Luther's burning of a copy of the *Corpus Juris Civilis* at Wit-

tenberg did not completely efface its influence in Protestant countries, and it had some influence on civil procedure and certain other features of English law.[91]

(d) The *Ecclesiastical State or Theocratic plan* of the Papal States recognized the pope, although no longer the effective claimant of universal sovereignty, in certain specified regions as not only the supreme religious power but also as the supreme civil power. In this way he ruled through his chosen ecclesiastics over about three million people in central Italy—the plan not extending elsewhere. These "States of the Church," which remind one of ancient Egypt under its priest-kings, were recognized in 1278 by the emperor as independent, under the pope as their free sovereign. With varying boundaries they continued with brief intermissions until the temporal power of the papacy was put to an end by King Victor Emmanuel II entering Rome in 1870. The independence of these states under the pope was even recognized by the United States, which was represented by a minister there during the middle years of the last century.[92] Geneva, "the Protestant Rome" under John Calvin after his return from banishment in 1541, was a government of a somewhat similar Church-State type. Calvin and Luther, the two leading Protestant reformers, differed radically in this matter, Calvin believing in the subjection of State to Church, Luther in the subjection of Church to State.[93]

(2) MODERN SOLUTIONS ATTEMPTED—ERASTIAN; LIBERAL STATE-CHURCH; JURISDICTIONALISM; AND SEPARATION PLANS

(a) The rigid *Erastian plan* (inappropriately named after a Swiss theologian, Thomas Erastus, 1524–83, who advocated the punishment by the civil authorities of the sins of Christians instead of withholding from them the sacraments), was one by which the State determined the policy of the Church and virtually controlled its conduct. This plan, advocated by Hugo Grotius, Dutch jurist and humanist (1583–1645), grew out of the decline of the power of the papacy in Western Europe, which began under Boniface VIII, pope from 1294 to 1303, but as an effective force in the West it was "the child of the Renaissance and Reformation."[94] It was this type of relationship—*cujus regio, ejus religio*—which developed in Germany and most other European states after the revolt of Luther, and had in it the seeds of State absolutism. The churches of northern Europe, seeking escape from a corrupt ecclesiastical domination, welcomed the new allegiance to the territorial sovereign, who was looked upon as a Christian leader chosen of God. The plan is generally called territorialism. As Dr. Figgis puts it: "When Luther appealed to the German Princes to take up the work of Reform he did not mean that he was appealing from the Christian church to a secular State, but merely from the clerical to the civil authority."[95] This was virtually the position in England that led to the Puritan revolt. When Arch-

bishop Laud (1573–1645) could say, "Jerusalem . . . stands not for the City and the State only . . . nor for the Temple and the Church only, but jointly for both,"[96] there was sure to be trouble. Quoting this statement, Professor Richard Tawney (1880–), in his brilliant book on *Religion and the Rise of Capitalism,* says: "In identifying the maintenance of public morality with the spasmodic activities of an incompetent Government, the Church had built its house upon the sand. It did not require prophetic gifts to foresee that the fall of the City would be followed by the destruction of the Temple."[97] In England, although a State Church still exists, the title "the Supreme Head of the Church of England" has not, since the time of Henry VIII, been claimed by any British sovereign after it was laid aside by Queen Elizabeth.[98]

Nazism is in many ways the most striking modern example of Erastianism. The delegates of the Lutheran Confessional Church, who had been duly appointed to attend the Oxford Universal Church Conference on Church, Community, and State in the summer of 1937, found at the last moment that they could not secure their passports. The reason, as stated in substance by the German government's spokesman, was that the subject to be discussed at Oxford was one which was not considered proper for the Church to discuss, as all the Church had to do was to find out what the State wanted and then do it! In other words, the Church had no right of independent action. A Nazi State Church of a neopagan type, emphasizing certain elements of Nordic mythology, discarding the Old Testament in its entirety as being Jewish, and omitting or modifying the Christian ideals of love and universal brotherhood, seemed at one time entirely within the range of possibilities.

A variant of Erastianism has been attempted in Soviet Russia, where, although under the constitution there is freedom of religious worship, the State for several years placed its whole power not only behind the movement to uproot the Russian Orthodox Church but to bring up a generation dominated by a materialistic and atheistic philosophy. This is shown by the fact that freedom of antireligious propaganda was specifically provided for in the constitution, but not freedom of religious propaganda.

In one of the most brilliant passages in modern writings on the subject of Church–State relations, Luigi Sturzo (1871–) has this summary of the development of such relations in modern times:

> . . . In the Reformed States, notwithstanding the mutual antagonism of Catholics and Protestants, the Christian and religious basis of the political power was never questioned. Indeed the union of the temporal with the spiritual was so close that the spiritual suffered; protection, control and mutual super-position ended by confounding the characters and ends of the two powers in a politico-religious confessionalism. Reaction to this led first to toleration, then to laicism, with or without the formal separation of

State from Church. But the modern State, born with the Renaissance and reaching maturity with the Reformation, remembered its original titles, and, while at bottom not wishful for separation, proclaimed its *autonomy* in the name of natural law. This would turn to *separation* in the name of liberty, *opposition* in the name of democracy, *laicism* in the name of bourgeois and working-class radicalism, *totality* in the name of nationalisms and racialisms of every species. Each of these principles was a denial of Christianity under particular aspects—jusnaturalism as natural law cut off from the supernatural; liberty as the autonomy of human reason; democracy as establishing the origin of authority in the Sovereign People (ignoring God or denying Him); radicalism as the vindication of human and social rights that were not recognised by the political and religious powers of the time, then in union; nationalism and racialism as forming a social totality in which the individuals were confounded and submerged, with all their values, including those spiritual and supernatural.[99]

(b) The *State-Church plan* gives an official Church a large measure of self-government, and—at least theoretically—has the most complete toleration for all other law-abiding religious bodies. This is known on the continent as the *Staats-religion* or *église dominante*. It has existed in England (Anglican) since the Act of Toleration of 1689, and has to a large extent been prevalent in many other countries; such as Scotland (Presbyterian), Sweden (Lutheran), and some of the Balkan States (Eastern Orthodox) between World Wars I and II. In the case of the Church of England, aside from the naming of bishops, where it is understood that the prime minister's nominations to the sovereign are made after consultation with one of the archbishops, the British government seldom interferes in Church matters. The recent refusal of Parliament to adopt the *Revised Prayer Book* presented by the Church in 1927, because of its provision of an "Alternative Order" for the administration of the holy communion, was an exception to this rule. It created so much adverse comment that legislation is expected, giving the Church entire autonomy in such matters, even if it continues to remain "established." The king is "Defender of the Faith," which is non-Roman and Anglican; he is no longer the "Supreme Head" of the Church of England. In public acts and utterances he and his government show a broad toleration; the principal distinction between the established church and other religious bodies in the eyes of the State being that the former alone is official and subsidized.

The best early development of the Anglican theory that Church and State are intimately related and both subject to the royal supremacy, is that of Richard Hooker (1553–1600), expressed by him in his *Laws of Ecclesiastical Polity*, of which the first half was published in 1593 or 1594. The book is specially important as representing the point of view in Elizabethan England, that is prior to the extremes that took place later under Archbishop Laud from which the Puritans

reacted so forcibly. Its breadth of outlook, tolerant spirit, and sincere attempt to provide through Anglicanism an inclusive settlement of reasonable religious differences, gave it wide influence. Although intended as an answer to narrow arguments used by Presbyterians in their attacks on the Church of England, it took the view that "a necessity of polity and regiment may be held in all churches without holding any form to be necessary."[100]

Hooker believed that civil and ecclesiastical government had virtually the same origin and sanctions, and that both required public approbation to prevent tyranny. Here is a passage from the book that both directly, and even more indirectly through John Locke and Algernon Sidney, had its wide influence on the thought that created our American system of government.

> The lawful Power of making laws to command whole Political Societies of men, belongeth so properly unto the same entire societies, that for any Prince or Potentate of what kind soever upon Earth to exercise the same of himself, and not either by express Commission immediately and Personally received from God, or else by authority derived the first from their Consent upon whose Persons they impose Laws; it is no better than mere Tyranny. Laws they are not therefore which Public approbation hath not made so.[101]

Such, in general, was the type of plan adopted not only in England but in countries of northern Europe where the Lutheran and Reformed faiths prevailed two generations ago, after the nonconformists in religion had won their rights, but while a State–Church still existed.

A good example of the broad religious spirit in England and some other countries under this plan, and the advantages of the toleration it provides, is that given by Walter Bagehot (1826–77), writing in 1874 on "The Metaphysical Basis of Toleration." He advocated a large tolerance in public discussions and showed its value.

> I say that the state power should not be used to arrest discussion, because the state power may be used equally for truth or error, for Mohammedanism or Christianity, for belief or no-belief, but in discussion truth has an advantage. Arguments always tell for truth as such, and against error as such; if you let the human mind alone, it has a preference for good argument over bad; it oftener takes truth than not. But if you do not let it alone, you give truth no advantage at all; you substitute a game of force, where all doctrines are equal, for the game of logic, where the truer have the better chance. . . . You may by persecution prevent minds prone to be Protestant from being Protestant; but you will not make men real Catholics; you may prevent naturally Catholic minds from being Catholic; but you will not make them genuine Protestants. You will not make those believe your religion who are predisposed by nature in favour of a different kind of religion; you will make of them, instead, more or less conscious sceptics. Being denied the sort of religion of which the roots are in their minds and

which they could believe, they will for ever be conscious of an indefinite want. They will constantly feel after something which they are never able to attain; they will never be able to settle upon anything; they will feel an instinctive repulsion from everything; they will be sceptics at heart, because they were denied the creed for which their heart craves; they will live as indifferentists, because they were withheld by force from the only creed to which they would not be indifferent. Persecution in intellectual countries produces a superficial conformity, but also underneath an intense, incessant, implacable doubt. . . .[102]

He proceeds to show—in keeping with Jeffersonian principles—why the broadest tolerance in the mere expression of opinion may be allowed, and at the same time restriction of freedom of action:

It is plain, too, that the argument here applied to the toleration of opinion has no application to that of actions. The human mind in the cases supposed, learns by freely hearing all arguments, but in no case does it learn by trying freely all practices. Society, as we now have it, cannot exist at all unless certain acts are prohibited. It goes on much better because many other acts are prohibited also. The Government must take the business, and the allowance of all would be the end of civilisation. But it must, under the conditions specified, hear all opinions, for the tranquil discussion of all more than anything else promotes the progressive knowledge of truth, which is the mainspring of civilization.[103]

The English State-Church plan, as it has developed during the past centuries, has become in many ways the most liberal that has been known in history, because dissenting bodies and their ministers, Christian, Jewish, and others, have the same rights of organization and of carrying on their work and worship as the Established Church. Furthermore, their adherents have the same franchise rights as Churchmen and are capable of filling all elective offices. The only important differences are in the constitutional field rather than the religious. These differences include such provisions as that the king must be a member of the Church of England, although a Presbyterian as far as Scotland officially is concerned; that certain bishops have ex officiis the right to sit in the House of Lords; and that certain financial advantages go with the establishment. This official relation of the Anglican Church to the government is an anomaly in view of the democratic character of the English government and life; and yet many nonconformists support certain features of it in the interest of the nation as a whole. In general the Church of England has become tolerant of other religious bodies. Its leaders today, although themselves "firm in the faith," have adopted something of the well-known latitudinarian attitude identified in the phrase *In necessariis unitas, in non necessariis libertas, in omnibus caritas.*

(c) The *Jurisdictional plan,* midway between those which have been described and the Separation plan which follows, is that known and practiced in

parts of Europe as Jurisdictionalism. This plan developed out of conditions which arose as a result of the Peace of Westphalia (1648) at the close of the Thirty Years' War, when there were three regularly tolerated and recognized religions—the Catholic, the Lutheran, and the Reformed. It became the plan in some of the German states, and in France prior to the passing of the law of separation in 1905, including in its scope even the Jewish synagogues, which received their regular subsidy from the State. It is still found in a few countries that wish to give freedom to all religious groups and a large measure of self-government under State supervision. Under this system—which has been tried in various forms—citizens are given equal liberty of conscience and worship, but the states do not divest themselves entirely of their responsibility for the historic churches, exercising a considerable measure of control over them, and continuing in some cases to grant them subsidies. For example, in Holland, though the royal family is of the Reformed (Presbyterian) Church, annual grants are also made to Roman Catholics, Jansenists, and Jews. Strangely enough, the term "Jurisdictionalism" does not appear in most of the standard English dictionaries. It has, however, been authoritatively defined by a continental writer in the *Encyclopaedia of the Social Sciences* as a system in which "the state aims to maintain equal status for the confessions (e.g., recognized religious bodies) within its dominion by exercising vigilant supervision of their activities."[104]

This general semi-Erastian plan has, in the opinion of Ruffini, who has emphasized it more than any other writer, certain advantages from the standpoint of protecting the religious freedom of the individual, although it does not give the organization the same degree of corporate liberty that it has under separation.[105] It tends to give the various denominations freedom in purely religious and theological matters, but to retain a certain amount of supervision, or at least the right of supervision, in so far as the Church's public relations and activities are concerned.

Ruffini seems to include Italy, prior to the 1929 treaty with the Holy See, under this general plan. It will be remembered that then the Roman Catholic Church was only nominally the ruling State religion; that public education had been secularized; that courses in theology had been abolished in State universities; that the religious character of matrimony had been removed as far as the State was concerned; that the power of Church and clergy was subordinated to the civil government; that ecclesiastical foundations had been disestablished or disendowed; and that there was freedom of worship for adherents of all "recognized religions," the State determining—an important prerogative under Jurisdictionalism—which should be recognized. Here is his statement:

> The modern Jurisdictionalist States, although having given up all exclusivism in the matter of religion, and having solemnly declared full religious liberty, even for those

religions which are not regarded as official or treated as public institutions, have nevertheless to a slight extent neglected in practice to ensure by adequate instructions the enjoyment of that liberty by the free religions or churches. This happens in a certain measure in Italy, for example. Here the most unlimited and real liberty of conscience and worship is guaranteed to every individual and every religion, and, consequently, the same protection is given by the laws to the adherents, the ceremonies, the buildings, and the ministers of all denominations. But the duty of deciding, case by case, what a denomination precisely is, and therefore of deciding upon the application of the protective rules, is left to the judgment of the magistrate. And the latter, very naturally, will find no difficulty in applying the rules when it is a question of the Catholic religion or of any of the religions which have an historical position in the country. But he will be found to hesitate when he is confronted by new religions or denominations. This happened, for example in the case of the Salvation Army, in relation to which contradictory judgments were delivered by the Italian Courts.[106]

Jurisdictionalism does not necessarily prevent one religious body from having special forms of recognition from a State where its membership is in the large majority, but it does assure that the State show its fostering care for and equal protection to all important religious bodies which it believes loyal to its higher interests. The nearest approach to the adoption of a form of Jurisdictionalism in this country was in Virginia in 1784–85, when Patrick Henry and his associates nearly persuaded the legislature of the state to adopt the Assessment Plan by which taxpayers would contribute to "the support of the Christian religion. . . ."[107]

(d) The *Separation plan*, as under our Constitution, involving the severing of all legal ties between Church and State, and entire freedom for all religious bodies, was something new in the world as far as actual realization on a large scale was concerned. It means that churches are equal in the sight of the State, and that no church has the advantages or the disadvantages of establishment. Historically, established or favored churches have almost invariably opposed separation, but theoretically it may be said that as the Church's authority was believed to come from God it could well afford to renounce any organic dependence upon the special favors of the civil power. In some countries which have adopted separation, such as the United States, although Church and State generally keep within their respective spheres, there is mutual understanding and sympathetic co-operation. In other countries the separation is rigid and at times mutually hostile. The former or American (U.S.) plan might be termed *benevolent separation*; the latter *unsympathetic* or *antagonistic separation*.

Complete freedom and independence, although long advocated by Anabaptists and some other Protestant sects, and approximated by some countries, has never until the present century existed outside the United States. France,

through the Law of Separation of Church and State passed in 1905, came near to American conditions while the republic lasted, but the long battle with the Roman Catholic Church has left there a political antagonism to organized religion which does not exist in America. Scandinavia, Holland, Switzerland, England, Scotland, the recent state of Czechoslovakia, and many other countries have been entirely tolerant of all religious groups, but in each case some religious body or bodies have been favored, by State grants, official status, or other methods. Even in most Latin American republics, with constitutions mainly modelled after that of the United States, although there is toleration of all faiths, there is still either a formal link with Roman Catholicism, as in the Argentine Republic, or State antagonism to the Roman Catholic Church, as recently in Mexico. Modern China, which owes so much to American ideals, and which has developed entire religious toleration under the lead of its two noted Christian heads of state, Sun Yat-sen (1867–1925) and Chiang Kai-shek (1886–), differs from the United States in that, owing to its Confucian rather than Christian background, there can scarcely be expected the same moral support for the churches from the State to which we are accustomed in this country with its centuries-old religious tradition.

The American Constitution had two features besides religious freedom that were new and epoch-making: the creation of the Supreme Court with its exceptionally large powers designed to preserve the Constitution and to protect minorities; and the freedom of the press, which had been first won in the Zenger trial in colonial New York in 1735. But it is doubtful whether either of these was basically as important as the clauses guaranteeing religious freedom under the Federal government in the Constitution and its Bill of Rights. Even a great republic like France, to which the United States owes so much, had not, owing to historical causes, the same degree of religious liberty as the United States. For example, under the Law of Associations of 1901 it was made a criminal offense for men or women to live in common the "religious" life without government permission, which was frequently withheld; and since the Law of Separation of 1905 the Jesuits have been officially banned from the country, although their return as private tutors and in some other capacities came to be tacitly allowed by the republic, and was authorized after the debacle of 1940. Such a statement as that by M. Emil Combes shows that in republican France of the last generation religious bodies were not recognized as having the inherent rights which we take in this country for granted. "There are," he said, "there can be no rights except the right of the State, and there are, and there can be no other authority than the authority of the Republic."[108]

This same view is mentioned by Burke, who, referring to a group of people whose views of church property he did not like, said: "They say that ecclesiastics

are fictitious persons, creatures of the State, whom at pleasure they may destroy, and of course limit and modify in every particular: that the goods they possess are not properly theirs, but belong to the State which created the fiction."[109]

We may summarize by saying that in modern times two methods have been adopted to try to insure the legal equality of different religious bodies, namely, Jurisdictionalism and Separatism. The first is the common European plan by which the State maintains such equal status by a vigilant supervision of Church activities. Separatism, on the other hand, which is the new American plan, tries "to attain the same end by relegating all religions to the sphere of private interests, to be invaded only when public safety appears to be involved."[110] This theory goes back to the basic fact that under our government certain rights are reserved to the people.[111] It was clearly stated by James Wilson (1742–98), one of the signers of the Declaration of Independence, in a speech before the Constitutional Convention of Pennsylvania in 1787: "Oft have I viewed with silent pleasure and admiration the force and prevalence, through the United States, of this principle—that the supreme power resides in the people; and that they never part with it."[112]

These historical facts will perhaps help us to realize how vitally important it is that we in this country should understand our heritage of religious freedom, with its closely related separation of Church and State, and that information about it should be available for persons abroad who wish to profit by our experience.

Chapter II

THE BASIC FACTS AND CONSIDERATIONS

Let us now consider some of the basic facts involved in our subject, remembering that community and State are often so interrelated that one cannot always be considered independent of the other; but the State's relationship to the Church, or rather to churches, will be our major concern.

It is necessary at the outset to remind ourselves that the United States is still a federal republic, in which the ideal of a constitutional democracy working under a written constitution is cherished by an overwhelming majority of citizens. In the 80th Congress (1941) with its 531 members—96 in the Senate and 435 in the House of Representatives—only two were not members of one of the two historic Republican or Democratic parties. But there was not a single member representing, at least officially, the Socialists, Communists, or any definite fascist group.[1] European movements advocating a totalitarian State, although they have a few vociferous advocates and have had influence in emphasizing some nationalistic extremes, in extending the power of the central Federal government, and in developing certain radical tendencies in an important section of organized labor, are not broadly influential. For instance, no responsible group has ever suggested that the State should control the teachings of the Church, or abolish it. Probably at least ninety-nine out of a hundred people in the United States are firm believers in a representative democracy under the Constitution, and almost as many are believers in religious freedom under existing conditions here.

Section 1. MANY DIFFERENT CHURCHES INVOLVED

We are inevitably embarrassed in dealing in these volumes with contemporary religious statistics in the United States. The reason for this is that there is no authoritative source of adequate recent statistical data regarding churches and religious affiliations. The latest satisfactory government publication on the subject—the *Census of Religious Bodies*—was based on 1926 figures. The census of 1936, as will be pointed out when government religious censuses are considered as a Church-State problem,[2] was unsatisfactory, many ministers and some churches being unwilling to co-operate. The expected census of 1946 did not materialize, owing to the failure of Congress to provide the necessary funds.

Hence we have no up-to-date official information. We have consequently used (with appropriate references) both the figures of 1926 and 1936, and the table in the 1948 *World Almanac*, which is based mainly on four sources: the 1936 census for the names of the 256 denominations; *The Official Catholic Directory* for 1947, for Roman Catholics; and the *Yearbook of American Churches* for 1947, which accepts the figures of the *Christian Herald*, printed in June of that year, for all denominations of 50,000 or more members.

Combining the last two and taking the official Jewish figures for 1937 we get the following overall picture:

Protestant	43,635,058
Roman Catholic	25,268,173
Jewish Congregations	4,770,647
Polish National, Greek Orthodox, and Russian Orthodox	825,000
Spiritualist (International General Assembly)	100,000
Buddhist of America	70,000
Total membership of Churches with 50,000 or more members:	74,668,878

For the many smaller denominations it is even more difficult to secure exact information; but there are at least two million members, including Pentecostal, Baptist, Methodist, Mennonite, Eastern Orthodox, and other groups.*

As to the largest Protestant denominations (those with over 500,000 members), the same 1947 estimates show the following:

Methodist (The Methodist Church)	8,430,146
Southern Baptist	6,079,305
National Baptist Convention, U.S.A., Inc.	4,122,315
National Baptist Convention of America	2,575,621
Presbyterian, U.S.A.	2,174,530
Protestant Episcopal	2,155,514
Disciples of Christ	1,889,066
United Lutheran Church in America	1,748,183
Northern Baptist	1,592,349
Evangelical Lutheran Syd. of Mo., Ohio, and other states	1,422,513
Congregational–Christian	1,140,824
Church of Jesus Christ of Latter Day Saints (Mormons)	911,279
African Methodist Episcopal	868,735
Evangelical United Brethren	705,102
Evangelical and Reformed	695,029
Evangelical Lutheran Church (formerly Norwegian)	661,355
American Lutheran	601,839
Presbyterian, U.S.	596,037[8]

* The *Christian Herald* 1949 statistics show a total for all Religious Bodies of 79,576,352.

This does not include some smaller but influential groups such as the Religious Society of Friends, with 113,465; Seventh Day Adventists, 208,030; and American Unitarian Association, 74,789.

These facts are important if we would understand the extent and difficulty of the American Church–State problem; very different from that in a country like Sweden with over 99 per cent of the population members of a single Church (Evangelical Lutheran); and if we would realize the actual and potential impact of the churches and their members on public opinion and State policy.

Much difficulty is created by the fact that religious bodies enumerate membership differently. All Roman Catholic Church statistics are for baptized members, and this has much historical justification. Most Protestant communions include only all thirteen years of age or over—that is, presumably those who by their own act have "joined the church," generally on confession of faith; while Jewish congregations enumerate all Jews in communities having a synagogue; and some Eastern Orthodox churches include all in their nationality group.

These 1947 statistics should be compared with the census figures for the population of the United States for the same year, namely, 145,414,000.

In these overall statistics, which are basic to the understanding of our Church–State problems, five general facts should be emphasized:

(1) Slightly more than 50 per cent of the people in the United States are now church members, a larger proportion than ever before in our history, and as Professor Sweet of the University of Chicago has repeatedly shown, far larger than in the colonial period.

(2) The country is predominantly Protestant, nearly a third (about 30 per cent) of the population being actual members of Protestant churches, and if those who call themselves Protestant as distinct from Catholic or Jewish are counted, a much larger proportion.

(3) The Roman Catholic population has numerically increased largely, but is not over one-sixth of the total population.

(4) The matter of size is not necessarily the final index of denominational importance or influence. Witness the Quakers, for instance. But in a democracy with suffrage for most persons twenty-one years of age and over it is not without its special significance from the political and public opinion standpoint.

(5) The tendency for the larger denominations to split up has been halted, and several scattered groups in the same religious family, such as the Methodists, have recently united, but there is a constant process of small new organizations of a somewhat extreme character being formed.

The problem of the relation between Church and State is complicated by the fact shown by these statistics that instead of "the Church" we have some 256[4] different churches or other organized religious groups recognized in the latest

official decennial *Census of Religious Bodies,* taken in 1936. This was an increase of 44 since 1926. The very large number of denominations is in some respects unfortunate; but it is reassuring to know that the 1940 figures of the *Yearbook of American Churches,* which are considered authoritative on this subject, show that of the then 52,405,609 church members over thirteen years of age, 97 per cent (50,871,793) were included in only 52 religious bodies, that is, in about one-fifth of the total number, leaving only 1,514,562 in the remaining 204 small religious groups.[5] Some of these latter are, however, as indicated above, highly important from the point of view of our study and for other reasons. These statistics do not include Jehovah's Witnesses—who consider themselves "a company of Christian people not identified with any sect or denomination,"[6] and certain other similarly organized and scattered small religious groups. They do, however, include the Salvation Army.

Satisfactory 1947 figures are not available in a form showing the relation of "inclusive" membership and membership of those thirteen years old or over, but these are given, together with the number of local churches, as estimated for 1940,[7] when the total population of the United States was 131,669,275, nearly 14,000,000 less than at present. The denominations are arranged alphabetically by "family group," but the figures at the left in parentheses indicate their relative size—which happens to be the same for the nation as a whole both in inclusive membership and membership thirteen years of age and over.

Denomination (1940)	No. of Bodies	No. of Local Churches Reported	Inclusive Church Membership	Membership thirteen years of age and over[8]
(2) Baptist	21	63,847	11,088,163	10,285,046
(9) Congregational-Christian	1	6,041	1,049,575	1,022,287
(8) Disciples of Christ	1	7,974	1,658,966	1,537,852
(4) Jewish Congregations	1	3,728	4,641,184	3,341,652
(5) Lutheran	20	15,759	4,781,447	3,450,726
(3) Methodist	19	58,335	8,928,998[9]	8,052,238
(6) Presbyterian	10	14,660	2,825,539	2,678,714
(7) Protestant Episcopal	1	7,074	1,996,434	1,420,171
(1) Roman Catholic	1	18,733	21,284,455	15,252,639

Attention should be called to the fact that these statistics are made without relation to race. In the case of the Baptists, for example, two of the many Negro Baptist bodies—those known as the National Baptist Convention, U.S.A., and National Baptist Convention of America—include, of those mentioned above, an "inclusive membership" of more than six million. Similarly, three of the many colored Methodist bodies, led in numbers by the African Methodist Epis-

copal Church, had 13,367 churches, 1,429,244 inclusive membership, and 1,229,126 membership thirteen years of age and over.[10]

To get the total picture before us, including the smaller bodies, the following summary is added, also as of 1940:[11]

Denomination	No. of Local Churches Reported	Inclusive Membership	Membership thirteen years of age and over[12]
Roman Catholic Church	18,733	21,284,455	15,252,639
Old Catholic Churches	93	25,909	20,803
Eastern Orthodox Churches	809	735,440	553,356
Jewish Congregations	3,728	4,641,184	3,341,652
"Protestant" Bodies over 50,000	199,762	36,103,984	31,722,647
All Other Bodies	21,194	1,710,622	1,514,562
Totals	244,319	64,501,594	52,405,659

It will be noted that Roman Catholic inclusive membership is to Protestant inclusive membership of bodies with at least 50,000 members, about as three is to five; and, similarly, in membership thirteen years of age and older, as one is to two.

In view of the various unsatisfactory factors mentioned above in connection with American Church statistics it is frankly acknowledged that exact accuracy is impossible, but all authorities agree that the percentage of inclusive church membership to the total population is fifty per cent or slightly above. The latest careful compilation noted, published in 1945 and based on statistics for 1943–44, showed such membership to have reached 52.5 per cent in the continental United States.[13]

Americans are prone to think in terms of churches or denominations rather than of the Church, and the multiplication of so-called denominations in the country is a natural development of the complicated factors of our national growth; our early political separation from Europe; complete religious freedom; the vast extent of our territory; frontier conditions; the large number of racial strains; the cleavages of the Civil War; and the natural independence of the American. In this connection Dr. William Adams Brown states that a denomination is "a body with the limitations of a sect and the self-consciousness of the Church Universal."[14]

American churches are mostly of three types: independent, democratic churches such as those of the Congregational pattern; representative, with some form of republican government, such as the Presbyterians; and episcopal, with bishops, and a form of government varying from monarchical, as with the

Roman Catholics, to "representative," as in the case of Methodists and the Protestant Episcopal Church.

But it must be remembered that nearly all American denominations go back to Europe for their origin or early development, except for a handful of Oriental cults and a few indigenous religious movements such as the Church of the Disciples, Christian Science, the Mormons, and countless small modern "marginal" cults.

Perhaps the "Union" churches should also be included in this latter category, of which in 1926 some 977 were found in the North and West alone.[15] In the 1936 census, 508 were listed as "Federated," with 88,411 members, and 434 as "Independent," including Independent Negro churches.[16] Of the churches which employ largely foreign languages, many of the smaller ones are still divided largely on the basis of European nationalities of origin. There is a story that there is one square in a Northwest city on which there are four different Lutheran churches representing four differing European traditions!

This checkerboard pattern has been still further emphasized in recent years by the rapid development—especially among the less educated Negro and other fundamentalistic evangelical groups in large cities seeking escape and self-expression—of various fervent and extreme cults. In the period from 1926 to 1942 some of these, such as the Apostolic Overcoming Holy Church of God, the Church of God and Saints of Christ, the Christian Congregation Evangelistic Association, the Church of God Apostolic, and the Free Christian Zion Church of Christ, showed increases of from 400 to 2000 per cent, but these little sects are apparently not drawing away any considerable numbers from the larger and more representative bodies. Indeed, it has been shown that the 132 religious groups with fewer than 50,000 members each, total only 1,329,721 members, or a little over 3 per cent of all Protestants.[17]

These more or less marginal or irregular minority groups have no uniform Church-State theory, and differ in other respects. They tend, however, so to emphasize emotionally their concepts of what constitutes evangelical religion that State responsibilities fall into the background. This is also an effect of their frequently held millennial beliefs.

Some idea of the varying conditions in the different states, as far as the churches are concerned, may be gained by considering such 1936 census facts regarding church membership as these:

The state of Alabama in 1936 had 1,138,472 members of all denominations, of whom only 33,104 were Roman Catholics; Georgia had 1,264,287, of whom only 23,092 were Roman Catholics; and South Carolina had 710,163, of whom only 11,543 were Roman Catholics—only slightly over 2 per cent of the church members in three representative Southern states. Consequently, these states are

overwhelmingly Protestant. On the other hand, in the State of Maine, due largely to the number of French Canadians who have come over the border in recent decades, of a total of 313,353 church members, 191,778 were Roman Catholics; and in New Hampshire, for similar reasons, of 237,736 members of all denominations, 157,751 were Roman Catholics.[18] In these two adjoining New England states the Roman Catholics had a clear majority of recorded church members, about 63 per cent of the population. If the members thirteen years of age and over are alone included, the Roman Catholic percentage would be slightly less, and if all "adherents" were grouped as "Protestant" or "Catholic," they would probably be about equal.

The changes in recent years in the East and certain other urban and industrial sections of the country, due to European immigration, Jewish and Catholic, and in New England, to these and Canadian Catholic immigration, have produced results that are very striking. For example, the 1936 Federal religious census[19] divides the total of 7,150,501 church members in New York state under their various denominations. From this we find that there were:

Roman Catholics	3,075,428
Jews	2,197,418
Protestants, etc.[20]	1,877,655

In Massachusetts the results are equally impressive. The total church membership of 2,609,101 divides itself:

Roman Catholics	1,696,708
Protestants[20]	654,449
Jews	257,944

Connecticut shows somewhat similar proportions. It should be remembered that these are all states with a strong early Protestant tradition.

In some states, according to the latest Federal religious census, that of 1936,[21] the total number of Protestant and Roman Catholic Church members is fairly evenly balanced. In only twelve states has a single denomination the majority. The Roman Catholics provide ten of these: Arizona, California, Connecticut, Louisiana, Maine, Massachusetts, New Jersey, New Mexico, Rhode Island (the only state now predominantly Roman Catholic), and Vermont—all states (except French-established Louisiana) which have been influenced by the immigration in recent decades. French Canadians have come in large numbers into the northeastern states, Mexicans have come into the Southwest, and Europeans with Roman Catholic background into the industrial centers of the East.

The other two states having a majority of church members in one denomination are the Mormon strongholds of Utah and Idaho, while in Wyoming their church, that of the Latter Day Saints of Jesus Christ, has only slightly under

half of the church members. If related members of a religious family group are considered, the number of states where one religious body has the majority would have to be increased from twelve to fifteen, because three states, namely, Georgia, Mississippi, and South Carolina, have a majority of Baptists, made up mostly of members of the Southern Baptist Convention and of Negro Baptists.

In five-eighths of the states, namely, thirty out of forty-eight, and in the District of Columbia, the Roman Catholics rank first in total number of members. These states are: Arizona, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa and Kansas (in both of which the Methodists run close), Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska (with the Lutherans close), Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, Wyoming (with the Mormons close), and, in addition, the District of Columbia.

In twelve states the Baptist group is ahead. These states are all in the South or along the border, where the Negro Baptists and the Southern Baptist Convention (white) are particularly strong, especially in the rural regions. The states are: Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

In three states of the Northwest, with a large Scandinavian population, the Lutherans are first, namely, Minnesota, North Dakota, and South Dakota. In all of these the Roman Catholics are a close second, while in Nebraska, where the Catholics are first, the Lutherans are also close to them in numbers. In one state, West Virginia, the Methodists are ahead. In several states they or the Baptists are the largest Protestant denomination.

There are also states where other denominations—Disciples of Christ, Jews, Congregationalists, Presbyterians, and Episcopalians—stand second or third, but in most states Roman Catholics, Methodists, or Baptists are the "runners up" where they do not lead.

In connection with the above statistics it should be remembered that we are dealing with the total number of reported members, or what is generally called inclusive membership. Here the figures are somewhat misleading, for the Roman Catholics and some other groups include all baptized members, while many Protestant denominations consider its members only those who have united with the church on confession of faith. To meet this difficulty the census gives, in addition to the total number of members, the membership of those thirteen years old and over. In many cases the Roman Catholic majority in a state disappears where the thirteen-year-old criterion is followed. If such persons only are included, it makes some changes, one or two states going over from a Catholic to a Protestant majority. The most interesting denominational changes on

this basis put the Methodists ahead of the Roman Catholics in Delaware, Maryland, and Kansas.

The Church seems to be just about holding its own with increases in the population of the United States. The public thinks it is growing more rapidly than Protestant bodies, because of its better publicity, the fact that so much is made of a few very prominent converts, and that the color and splendor of church pageantry add much both to popular appeal and to the impression of prominence.

These statistics, though for the reasons stated at the beginning of this section not entirely satisfactory, will give some idea of the variegated church picture in the United States; and it must be remembered, as we shall see later, that the denominations differ greatly toward the State and its activities.[22] Those whose ancestors fled from religious persecution abroad, even though not always tolerant themselves, are likely to be in the lead in insisting on the guarantees of freedom from State interference in all matters where liberty of conscience is concerned. Quakers, Congregationalists, Huguenots, and Baptists—the last with their European Anabaptist origins—are examples.

Section 2. MANY STATES WITH VARYING TYPES OF POPULATION

The problem of Church-State relations is also complicated by the fact that our country is made up of forty-eight different states, two territories—Alaska and Hawaii—the Federal District of Columbia, and several insular possessions. The states and territories have their differing constitutions, and the former are, within the broad framework of the Federal Constitution, self-governing. They differ not only in religious and denominational make-up as shown in the previous section, but also in history, laws, type of population, and public opinion. A few examples from the 1940 United States census will bring out clearly this variety of background.

Maine, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, and Vermont each had under a thousand residents born in Germany, while Illinois, New Jersey, New York, Pennsylvania, and Wisconsin each had over eighty thousand. Similarly, twenty-one states had under a thousand residents born in what is now the Irish Free State, while New York had 205,323 and Massachusetts 103,388.[23] Again, Arkansas, Mississippi, Nevada, New Mexico, and Utah had under five hundred residents born in Russia, while New York had 436,028 and Pennsylvania 95,803—mostly Jewish.[23] Poland shows similar contrasts. Obviously these differences of racial origins in various states create profound differences in religious background and problems. Immigrants almost

always bring with them not only inherited religious connections but experiences in a State Church, a tolerated Church, or a persecuted Church, that give color to their views of religious freedom.

Hence the large number of different denominations and states, with differing racial, national, and religious backgrounds, create varied and difficult problems in the field of religious freedom and relations between Church and State. According to the census of 1940 there were, for example, in addition to 12,865,518 Negroes, 333,969 American Indians, 77,504 Chinese, 126,947 Japanese, 45,563 Filipinos, and 52,479 persons born in Turkey in Asia.[24] There were also 11,419,138 foreign-born whites. It will be seen that of a total population of 131,669,275 a large percentage was not of what is commonly called pure American stock. This fact is mentioned not because one racial stock is necessarily better than another, but merely to indicate the variety of stocks in our population. To make the matter even more concrete: in 1940 there were in New York City alone 2,080,020 foreign-born and 458,444 Negroes out of a total population of 6,977,501, while in the state of New York there were not only nearly half a million persons born in Russia, but 584,075 born in Italy, 489,191 born in Germany and Austria, and 281,080 born in Poland.[25] There was also a Negro population of 571,221 and a Jewish population of 2,206,328 (1937) out of a total of 13,479,142. In New York City in this same year—the last for which satisfactory religious statistics are available—the Jewish population was 28.08 per cent of the total.[26]

As a result of these conditions, due largely to varying types of population, the states differ widely in their attitude toward the churches and especially toward the complicated problem of religion in the schools. They agree that there can be no denominational instruction in our public schools—schools supported by public taxation—but in general in the rural South, and in some other portions of the country where the Protestant element is in the large majority, daily Bible reading and the repetition of the Lord's Prayer is either required or allowed. In other states this practice has been forbidden, usually as a result of court interpretations of the Constitution. Furthermore, some states permit religious education given public school pupils in religious schools subject to public inspection, to be credited on the school records of the pupil when courses have been satisfactorily completed. Others do not permit this. These and similar matters will be discussed at length later.[27] They are mentioned here merely to indicate the complications which enter our problem as a result of our large number of denominations with differing views as to the type of religious education needed, and the large number of diversely composed self-governing political units involved.

Such facts and statistics as have been recorded in these last two sections may seem dull reading, but without knowing about them we cannot understand the Church–State question in this country, or realize the vital importance of

maintaining intact those constitutional provisions which are the legal basis of our religious freedom.

Section 3. RESULTING UNITY IN DIVERSITY

It will be seen that the problem in the United States is a very complicated one, as there is no uniform pattern; and there is much difference of opinion, among different religious bodies and within their membership, as to how the Church may best do its work and best serve the State. It may be said, however, that in general throughout the United States there is entire religious freedom. The duly incorporated churches are all exempt from taxation and are treated alike in the eyes of the law; Protestants, Catholics, and Jews are equally eligible as voters and as candidates for political office; there is no required religious instruction in tax-supported institutions; and states do not permit public funds to be given for denominational schools, although there are a very few partial exceptions even to this rule.

Such uniformity as exists in the churches is due largely to the wisdom of early state constitutional conventions, and to the provisions and influence on state constitutions of the United States Constitution with its Bill of Rights, and the interpretation of these by the Supreme Court. These will be discussed in a later chapter (VIII).

The most important thing to remember is that in the United States there is not only no established Church, such as exists in Italy, England, Sweden, and other European countries, but that there is no single communion which at all dominates the situation either because of a favored status, or because of predominance of numbers. As James Bryce stated nearly half a century ago: "All religious bodies are absolutely equal before the law, and unrecognized by the law, except as voluntary associations of private citizens."[28]

The second fact to bear in mind is that just as there is no single Church, so there is no single State. The United States is a federation of forty-eight independent states which make their own laws and control those issues where Church and State are most likely to conflict, namely, education, marriage, and divorce, and the public observance of Sunday.

Third, each of these states is, however, guaranteed by the Federal Constitution "a Republican Form of Government,"[29] and each has a constitution and laws that are and must remain consistent with those of the Federal government, with members of the state legislature, and state executive and judicial officers, required by oath or affirmation to agree to support the Federal Constitution. As a result—in spite of much diversity in historical background, laws, customs, and denominational membership—there is close to unity in the fundamental empha-

sis on religious freedom, although there is some difference of viewpoint regarding its interpretation.

A factor for unity is that virtually all American citizens are theists and that the overwhelming majority are Christians. The only large group not accepting, at least in theory, the Christian position is that of the Jews, nearly five million strong;[30] but there is an increasingly important element of liberal Jews who recognize Jesus of Nazareth as a great religious prophet of their race, who accept His social teachings as based on the Old Testament, and who appreciate the importance of the Christian tradition in American life. In this connection the relation of the Jewish–Christian tradition to the ideal of freedom is important. It goes back to the teachings of the book of Genesis that "God created man" in His "image" and after His "likeness"[31]—man receiving a spark of the divine life. It has its consummation in the revelation of the Founder of Christianity. Here are a few quotations from the Bible—both Old and New Testaments—which proclaim this ideal:

> Proclaim liberty throughout the land to all the inhabitants thereof. Leviticus 25.10.
>
> I will walk at liberty: for I seek thy presence. Psalms 119.45.
>
> Ye shall know the truth, and the truth shall make you free. John 8.32.
>
> Where the Spirit of the Lord is, there is liberty. 2 Corinthians 3.17.
>
> Stand fast therefore in the liberty wherewith Christ hath made us free. Galatians 5.1.

The synagogue, with its self-government, its basic teaching of the unity of God and high ethical standards, its democratic tradition, and its emphasis on education, provided a foundation for the work of the Christian Church. The Jew, with his history of belonging to a persecuted people, has naturally been an advocate of freedom and liberalism.[32] The leaders of Judaism have united in this country with the leaders of the more numerous and more influential Christian groups in demanding freedom, and have frequently based the demand on its proper religious foundation.

Part Two

THE FOUNDATIONS OF AMERICAN CHURCH–STATE SEPARATION AND RELIGIOUS FREEDOM

Chapter III

THE BACKGROUND OF AMERICAN DEMOCRACY, RELIGIOUS FREEDOM, AND CHURCH–STATE RELATIONS

It will be noticed that the heading of this chapter combines important and closely related elements in the American religious tradition: religious freedom and Church–State relations. The solution which we have worked out in this country between Church and State to produce our existing religious freedom might be expressed in the two words "friendly separation," or "co-operative separation." The two "powers" are entirely separate in organization, administration, and support, but the relation between them is one of mutual good will and sympathy resulting in much co-operation for the common good. It is doubtful whether this happy result could have been worked out except in an enlightened democracy with its component elements brought together in a new land from many religious, social, and national groups.

The inheritance of the American Republic was twofold: from the European background, and from colonial experience. We must start historically with the European background.

Section 1. THE MAJOR OLD-WORLD INFLUENCES

In this section we shall discuss the various inherited strands from the Old World that formed the spiritual basis on which the colonies developed their culture and distinctive ideas, and on which the Founding Fathers built the republic. We are well aware that Egypt, Persia, China, India, and other nations of the Near East and Far East made important contributions to the cause of religion and of religious freedom. Some of the more important of these are noted in the table of dates,[1] but here we are concerned only with Western Europe and the two countries of the Eastern Mediterranean which influenced them so powerfully, Judea and Greece. These also served to transmit and transmute some of the social and spiritual ideals developed by the rich civilizations of Asia and Northern Africa.

(1) THE DECALOGUE, THE HEBREW COMMONWEALTH, AND THE PROPHETS

The decalogue provided the basis of the moral law of Israel, and in a later simplified form of Christianity, and was consequently given a position of great

authority from the earliest times in all the colonies. There are probably still hundreds of Congregational churches in New England and Episcopal churches in Virginia that contain the table of the law on a tablet near the pulpit or in the sanctuary. A survival of this is the law of North Dakota, which requires that the ten commandments be displayed on a placard in every public schoolroom.[2] There are also cases where the commandments on bronze tablets or otherwise have been placed in courthouses. Shreveport, Louisiana, is a recent instance (1941).

The origin of the ten commandments is one about which there is some difference of opinion among competent scholars. It is thought that some parts of the law may go back to Moses, but that it was put into approximately its present form as a result of the influence of the ethical awakening which followed the preaching of Isaiah and the other great Jewish prophets of the eighth century B.C. They are for our purposes important as indicating that God is the ultimate source of all authority; that religious faith must be brought to bear upon ethical conduct. Not unreasonable corollaries frequently drawn from them are that the Church should interest itself in those affairs of the State which affect human welfare, and that the State should protect and encourage religion.

The so-called summary of the law, in which Jesus Christ reduced the commandments to the two fundamental ones of love to God and love to our neighbor, brings out even more clearly the close relation between religion and social conduct. It should be remembered also in connection with the influence of the Mosaic commandments, that Jesus accepted them as a revelation of God and declared that they were valid for all time. They are "not the traditions of men" but "the commandments of God."[3] It should be noted, however, that Jesus freed the moral law from its association with outward ritual.

The Hebrew theocratic commonwealth, founded according to tradition by Moses about 1200 B.C., was another factor of influence on the formation of our government. Old Testament ideas of the State were specially strong in New England. They appear not only in the seventeenth century period of the Mathers but among the great leaders of thought in the Revolutionary time, such as Jonathan Mayhew (1720–66). The distinction between the public functions of Moses and Aaron was an early recognition of the division of powers between civil and ecclesiastical authorities. This was often recognized by Puritan divines, as, for example, in the book by James Noyes (1608–56), Oxford graduate and Massachusetts pastor, published in London in 1661, with the title *Moses and Aaron, or the Rights of Church and State.* The distinction between the two responsibilities was made even sharper when Moses, as the recognized leader of his people, named Aaron to take charge of the priestly duties and

Joshua of the military duties. In turn, Joshua succeeded Moses as head of the State, and he was followed for several centuries by the judges duly elected by the people. It was then that the Hebrews developed what Oscar Straus has called "a federal democratic republic,"[4] with its tribal self-government, and duly elected representatives in the Sanhedrin. To describe its democratic character he quotes Algernon Sidney (1622–83), whose *Discourses concerning Government* is known to have been in the libraries of Thomas Jefferson and other founders of our government, and to have been a highly influential work. Sidney sums up his estimate of the Hebrew commonwealth in these words:

> Having seen what government God did not ordain, it may be reasonable to examine the nature of government he did ordain, and we shall find it consisted of these parts, besides the magistrates of the several tribes and cities: They had a chief Magistrate, who was called Judge or Captain, as Joshua, Gideon, and others; a Council of seventy chosen men, and the General Assembly of the people. The first was merely occasional, like to the Dictators of Rome. . . . The second is known by the name of the Great Sanhedrim, which, being instituted by Moses, according to the command of God, continued till they were all, save one, slain by Herod. And the third, which is the Assembly of the people, was so common that none can be ignorant of it, but such as never looked into the Scripture.[5]

It is doubtful whether Hebrew influence on our government structure was in detail as great as Mr. Straus believed, but such facts as that the national seal[6] was taken from Hebrew sources, that the ancient commonwealth had public assemblies of a representative character, and other evidence, show that the democratic ideas of the Jewish people, their recognition of God as the Supreme Ruler in human affairs, and the conception of the covenant between God and his people, impressed the Founding Fathers.

The Jewish prophets were also highly influential in early American thought, especially in New England. They strongly supported both the ethical teaching of the Mosaic law and the idea that the Jewish people had formed a covenant with God. They are not to be looked upon so much as "foreseers" as proclaimers of personal and social righteousness demanded by a God of holiness and justice. Amos, Hosea, and Isaiah are typical of these great reformers of the eighth century before Christ, who insisted that the nation and all its members should renounce evil and turn to God; that social reforms should be adopted; that the abuses all too often associated with large wealth should be discarded; and that the social and economic welfare of the masses of the people should be borne in mind. It is not without significance that a Vice-President of the United States, Henry A. Wallace (1888–), has not only written a book on *Statesmanship and Religion*, but has frequently spoken on the Old Testa-

ment prophets. Indeed, those who approach political and social reform today from the point of view of religion almost invariably make much of the great prophets of Israel who felt that "righteousness alone exalteth a nation."

It is also significant that in the work by Professors Edman and Schneider on *Fountainheads of Freedom—The Growth of the Democratic Idea,* the first historic incident or statement to be recorded is the prophet Samuel's emphasis on the fact that the only true king was the God of Israel with whom the Jewish people were in covenant relations, and that loyalty to Him was the basis of righteousness.[7]

The same writers maintain that the book of the covenant was "the first instance of the Social Contract." This theory, modified by Rousseau, was well known to many of the framers of our Constitution and had its strong influence upon them. In the original Hebrew sense it was not only a covenant between a ruler and his subjects, but also between a people and a God-King who was to be their special guardian. In return for the land of Canaan and His protection they were expected to keep His law and commandments.[8]

Some Jewish scholars, of whom Rabbi Louis Finckelstein is a notable example, emphasize the fact that during most of their history the Jews, though laying supreme emphasis on monotheism and opposing idol worship, were reasonably tolerant touching conditions of religion in their own group and in the outside world. They permitted the differing views of the schools of Shammai and Hillel to exist side by side, while the Sanhedrin included both Sadducees as well as Pharisees. As far as outside religions were concerned, they adopted the conception of the so-called Noachic commandments mentioned for the first time in the Book of Jubilees, probably written in the second century before Christ. These commandments, which are said to have been revealed by God to Noah and therefore binding on all mankind, include the prohibition of idolatry, murder, unchastity, and theft, and the injunction to observe the civil law. Those who accepted these injunctions and followed them were, from the Jewish point of view, members of the large community of the righteous worshipers of God, even though not of the Jewish fold. In later Jewish history, when published books such as those of Maimonides (1135–1204) were considered at all heretical, it was the books rather than their authors that were banned.*

(2) THE GREEK CITY-STATES

The Greek city-states, and especially Athens, must be at least mentioned among the historic precursors of American constitutional democracy. The very word "democracy," as is well known, comes from two Greek words, δῆμος

* See espec Finckelstein, Louis, "The Ideal of Religious Liberty—A Jewish View," in Johnson, F. Ernest, ed., *Wellsprings of the American Spirit.*

and κράτος—the rule of the people. Aristotle believed that such form of popular government resulted in mob rule, and he opposed to it a form of constitutional government or πολιτεία which was rule by a majority of the free and equal citizens; but in his day the Athenian democracy had degenerated. It had reached its highest point under Pericles (*c.* 495–429) in the middle of the fifth century B.C.

Democracy, as it originated in Greece, stood at least for a form of government in which the citizens shared in both determining and directing the activities of the State and in participating in its rewards. In these respects democracy differed from aristocracy or any form of dictatorship. But in the golden days of Athens the citizens who controlled policy were limited in number. Pericles, for instance, restricted citizenship to men who were the sons of an Athenian citizen and an Athenian mother. Slaves—who formed a majority of the total population—resident aliens, subject allies, and those whose descent was not sufficiently honorable, were excluded. The idea of equality of political privilege was restricted. It was consequently a narrow form of democratic government, although those who were citizens did have the right to assemble at regular intervals for various legislative and other purposes, in a sovereign assembly known as the ἐκκλησία—from which we derive our word "ecclesiastic." This from of assembly, as adopted in Rome, became the *Consilium Plebis*, or *Comitia*.

The Athenian system worked well for a time. It tried to foster "the good life," and was at least partly responsible for the amazing flowering of political, literary, and artistic genius in the age of Pericles. Perhaps its major weakness was that it had no real system of representation, although a policy of rotation gave citizens their turn in filling certain important offices. This yielded in time to more broadly national and imperialistic ideas. Its shortcomings were made clear by Plato, who rejected it in its entirety, and by Aristotle, who accepted it as merely less dangerous than other forms of government that had been tried.

As to the relation between religion and government in the city-states of Greece, the most important thing to remember is that religion, as represented by the regular temple worship, was in the service of the State and the priest was a State official. In other words, society was the reverse of theocratic. The State was supreme. Indeed, in many cases the city-state was of religious origin, growing up around some famous temple. A citizen was "religious" partly because of personal conviction, but mainly because it was his duty to the State. It was largely because of this formal and public character of religion that the mystery cults developed which overcame both ritual and political barriers and promoted spiritual satisfaction. The conventional religions of Greece were much taken up with the propitiation of the recognized gods, seeking good fortune first of all for the State, the city, the tribe, and the family, and only after

that for the individual. As a result, mystery cults were largely imported from abroad through subterranean channels, and met the religious needs which the State worship did not supply.

As to the citizen of one of the city-states, it was taken almost as a matter of course that the propitiation of the gods recognized by the State was a part of his patriotism, so that the temple seemed as much a public institution as the agora. Plutarch makes a statement which reflects this general view as to the importance of religion to the maintenance of any well-ordered society.

> You might find by traveling cities without walls, without letters, without kings, without houses, without money, needing no coinage, destitute of theaters and gymnasia; but a city without temples and without gods, making no use of prayers or oaths or divinations, nor sacrifices to obtain blessings or avert evils, there is no one, nor ever will be who has seen; and it is my opinion that a city would be more likely to get foundation and having got it preserve it, without ground (on which to build it), than a state (to get foundation and having got it to preserve it) if its belief concerning gods were taken away altogether.[9]

It will be seen that the city-states of Greece made no direct contribution to the Church–State theory in the United States. Had L'Enfant's plan for a National Church in Washington, to which reference will be made later,[10] been carried into effect, a slight connection might have been visible, but fortunately it was not. America was to learn much from Greek ideas of democracy and of freedom of thought, but as far as religion and the separation of Church and State were concerned, the influences were to come from other sources. The Greek city-states recognized the privilege of that small group which made up their citizenship, but they did not recognize the rights of man as such. The principal contribution of Greek and Roman governments to modern democracy was their conception of law as the expression of the will of the citizens—*lex est quod populus jubet atque constituit.*[11]

The free cities of Italy in the late Middle Ages, representing autonomous centers of culture, had much in common with the early city-states in Greece. Their cosmopolitan life contributed to that freedom of the spirit in which so many of the leading universities developed, especially Padua, whose "Paduan liberty" was well known. One of its eminent citizens was Marsilius of Padua (1270–*c.* 1342), whose *Defensor pacis* (1324) was in many ways the most revolutionary of medieval books. It took the democratic ground that all power was derived from the people, who should elect their own priests and bishops. He held that the popes had abrogated powers that belong to general councils with duly elected delegates, and that the State should curb the extreme powers assumed by the Church.

Some of the founders of our government were well versed in European po-

litical history and knew the virtues and defects of the city-states of Greece. Mason and Jefferson may be taken as examples.[12] An interesting quotation is found in a letter written by Jefferson to a Greek citizen in 1823:

No people sympathize more feelingly than ours with the sufferings of your countrymen (the Greeks), none offer more sincere and ardent prayers to heaven for their success. And nothing indeed but the fundamental principle of our government, never to entangle us with the broils of Europe, could restrain our generous youth from taking some part in this holy cause. Possessing ourselves the combined blessing of liberty and order, we wish the same to other countries, and to none more than yours, which, the first of civilized nations, presented examples of what man should be. Not, indeed, that the forms of government adapted to their age and country are practicable or to be imitated in our day, although prejudices in their favor would be natural enough to your people. The circumstances of the world are too much changed for that. The government of Athens, for example, was that of the people of one city making laws for the whole country subjected to them. . . . These are not the doctrines of the present age. The equal rights of man, and the happiness of every individual, are now acknowledged to be the only legitimate objects of government. Modern times have the signal advantage, too, of having discovered the only device by which these rights can be secured, to wit: government by the people, acting not in person, but by representatives chosen by themselves, that is to say, by every man of ripe years and sane mind, who either contributes by his purse or person to the support of his country. . . .[13]

George Mason (1725–92) was one of the founders who learnt much from the history of those small European states which contributed the most—outside of England and France—to the idea of democracy. In a speech, evidently prepared for delivery in the Constitutional Convention, he wrote:

. . . Every husbandman will be quickly converted into a soldier when he knows and feels that he is to fight not in defence of the rights of a particular family, or a prince, but for his own. This is the true construction of the *pro aris et focis* which has, in all ages, performed such wonders. It was this which in ancient times enabled the little cluster of Grecian republics to resist, and almost constantly to defeat, the Persian monarch. It was this which supported the States of Holland against a body of veteran troops through a thirty years' war with Spain, then the greatest monarchy in Europe, and finally rendered them victorious. It is this which preserves the freedom and independence of the Swiss Cantons in the midst of the most powerful nations. And who that reflects seriously upon the situation of America, in the beginning of the late war —without arms—without soldiers—without trade, money or credit, in a manner destitute of all resources, but must ascribe our success to this pervading, all-powerful principle?[14]

It will be seen from the above that the Greek city-states had from a modern standpoint a very limited form of democratic government, but the roots of political democracy, as distinct from those of equality, go back to them. They also

developed a lofty conception of patriotism which has been an inspiration to American youth of culture and ideals. The Athenian must always place the needs of Athens before his own needs.

(3) THE GREEK PHILOSOPHERS

The life of the Greek city-states was indebted in many ways to Greek religion, and this religion was also in turn at the service of the State, the priest being a public official. The close connection between the local temple and the community was generally recognized in the ancient world. Indeed, it was not until Christianity became a force in the Roman Empire that Church and State were clearly differentiated.

The Greek religions, as such, did not have any notable effect on the subject of this study. The lack of any stabilizing factor in them, such as would have come with a clear-cut monotheism, was disastrous, but Greek philosophers must be remembered with deep gratitude, as they were the first in the history of the world to stand clearly for those ideas of freedom of conscience and of independent thinking, and, in the case of Zeno, ideas of human brotherhood and of natural law, which were to find their incorporation in the American Constitution and way of life. These developments must always be associated particularly with four names: Socrates (469–399 B.C.), Plato (427?–347 B.C.), Aristotle (384–322 B.C.), and Zeno (*d.* 324 B.C.), or, perhaps better, the Stoic school of philosophy which he established.

Plato's *Apology,* the defense of Socrates, must be considered as in many ways the first great tribute to the significance of intellectual and spiritual freedom. It is not known with certainty how much of it actually represents Socrates' own words prior to his martyrdom and how much represented the pupil's interpretation of what his great master must have said on the occasion. At any rate it is a noble statement. It emphasizes the vital importance both of freedom of inquiry and freedom of criticism, including the criticism by the citizen of public men and their acts. It takes the ground that the citizen "ought only to consider whether in doing anything he do right or wrong."[15]

One of the finest passages is the one in which Socrates is quoted as saying to his judges:

> Men of Athens, I honor and love you; but I shall obey God rather than you, and while I have life and strength I shall never cease from the practice and teaching of philosophy, exhorting any one whom I meet after my manner, and convincing him, saying: O my friend, why do you, who are a citizen of the great and mighty and wise city of Athens, care so much about laying up the greatest amount of money and honor and reputation, and so little about wisdom and truth and the greatest improvement of the soul, which you never regard or heed at all?[16]

He adds:

> . . . For if you kill me you will not easily find another like me, who, if I may use such a ludicrous figure of speech, am a sort of gadfly, given to the state by the God; and the state is like a great and noble steed who is tardy in his motions owing to his very size, and requires to be stirred into life. I am that gadfly which God has given the state, and all day long and in all places am always fastening upon you, arousing and persuading and reproaching you. . . .[17]

The *Apology* is a magnificent appeal for the independence of the citizen in trying to advance the interests of the State—a lesson of vital importance to democracies.

According to Plato, Socrates does not deny "the gods which the state acknowledges," but says: "I do believe that there are gods, and in a far higher sense than that in which any of my accusers believe in them. . . ."[18]

To the men of classical antiquity generally, religion was closely related to the State, and was thought of as belonging almost more to the community than to the individual. Religious freedom, as an individual right, and as distinct from toleration of certain unofficial cults, did not occur to them. They felt that the State had a right to insist on certain public religious sacrifices, rites, and ceremonies. As a result, such persecutions as Greek philosophers or as Roman Christians experienced were due mainly to fear on the part of the authorities that their views might be injurious to the constitution and life of the State. As Duruy and Ruffini have pointed out, neither Socrates nor other philosophers of his time opposed persecution by any appeal to the principle of liberty of conscience.[19]

It was Socrates' character, as summed up in his death for conscience' sake, that makes up think of him today as one of the greatest of the world's ethical heroes; a deep thinker, intensely interested in the welfare of his city-state, who never hesitated to criticize the government of the day when he thought it wrong, and who always tried to bring back the people of Athens to sound moral and religious ideals.

Plato's belief in a First Cause, an immortal World-Soul; his utterances on the need of virtue and of social justice; his controlling courage and wisdom; his upholding of the citizen's right and duty of criticizing public officials and policies; his deep studies of public affairs, and his conception in the *Republic* of a Utopia in which "philosophers would rule," education would fit each citizen for his part in the common life, and private property would yield to the needs of the State—all these had their real influence on American thought.

Aristotle is by common consent one of the great thinkers of all times. His emphasis on the scientific method, his insistence on the golden mean in ethics, and his *Constitution of Athens,* are among the things for which we hold him

in high esteem. He is for our purposes specially important, as he was accepted almost as a saint by the Catholic Church in the Middle Ages, and profoundly influenced its thought not only in logic and the natural sciences, but in many other matters. Among these were the arguments for the existence of a supreme First Cause, the denial that the State is absolute, the teaching of man's inability to attain complete happiness except in his dependence on his fellow men in social and political relations, the need of citizens' propitiating the gods, and the recognition that the best form of government is that which best suits the character of the people it serves. He was much less aristocratic than Plato in his political point of view, and had greater respect for public opinion and consent in dealing with the welfare of the masses, but he was equally opposed to their taking part in politics. He believed that the State should be governed by civic-minded and responsible citizens and should consequently represent only a "moderate democracy."

Jefferson and John Adams both acknowledged their indebtedness to Aristotle. Jefferson states that his *Politics,* representing a "style of society" so different from that of their time,[20] could teach Americans little about government, but that his writings had "just ideas of the value of personal liberty," and he named them first in point of time among those which influenced the Revolutionary mind in America. The passage in which he expressed these views regarding the origin of the Declaration of Independence is so striking that it is well to quote from it at some length. Writing May 8, 1825, to Henry Lee, Jefferson says:

> . . . with respect to our rights, and the acts of the British government contravening those rights, there was but one opinion on this side of the water. All American Whigs thought alike on these subjects. When forced, therefore, to resort to arms for redress, an appeal to the tribunal of the world was deemed proper for our justification. This was the object of the Declaration of Independence. Not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent, and to justify ourselves in the independent stand we are compelled to take. Neither aiming at originality of principle or sentiment, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind, and to give to that expression the proper one and spirit called for by the occasion. All its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc.[21]

John Adams states that the American government is based on "revolution principles," and he traces them back to Aristotle.

> These are what are called revolution principles. They are the principles of Aristotle

and Plato, of Livy and Cicero, and Sidney, Harrington, and Locke; the principles of nature and eternal reason; the principles on which the whole government over us now stands. It is therefore astonishing, if anything can be so, that writers, who call themselves friends of government, should in this age and country be so inconsistent with themselves, so indiscreet, so immodest, as to insinuate a doubt concerning them.[22]

It is stimulating to know that among the Founding Fathers there were some to whom the writings of Aristotle and Plato were well known and helpful.

Zeno of Citium, at the start of the fourth century B.C. (about 304), founded in Athens a school of philosophy which under him and his successor, Cleanthes, influenced the world in general and the United States in particular by its ideas of human brotherhood, transmitted especially through St. Paul and the Roman Stoics, as seen at their best in Cicero, Seneca, and Marcus Aurelius. Those aspects of Stoicism of most interest to us were the result of the interaction between East and West which came from the large number of foreigners in Athens and the conquests of Alexander the Great. These facts made it seem necessary to reconsider many fundamental matters. The Stoics developed a system which emphasized the highest ethical standards, a large measure of individual responsibility and freedom, the subordination of personal ends to the needs of society, and the recognition that all who own one law are citizens of one State, "the city of Zeus." In his *Republic* Zeno anticipated a state where law courts would not be necessary, in which differences of nationality would be merged in a common human brotherhood. The whole tendency of the Stoics was to emphasize the highest ideals of personal character, with a broad conception of cosmopolitan citizenship based on the equality and fraternity of men. In this the old dividing line between "Greek and barbarian" disappeared, as well as the difference in civic status between man and woman; and slavery, although accepted, was to have its evils mitigated by humane actions. The Stoics were profound believers in natural law and natural religion. God was everywhere, the law of the world, and its upholder and ruler.[23]

One incident in Zeno's life and a tribute to him by Plutarch will show the breadth of Stoicism as a social philosophy. In the year before his death, following the mutiny of Macedonian troops because of the favor he had shown the inherited enemies of Greece, the Persians, Zeno prayed for a union of hearts and a joint commonwealth of the two peoples; while Plutarch records Zeno's conviction that there should not be different city-states, each with its own system of justice, but that all men should be "fellow-citizens" and that there should be one life and order, as of a flock pasturing together, which feeds together by a common law.[24]

The influence of Zeno and his school of philosophy reached this country via Locke and other eighteenth-century philosophers through the Christian teach-

ing of St. Paul, the Roman Stoics, and some of the fathers of the Church.[25] St. Paul's teaching of brotherhood, summed up in his statement that "There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus,"[26] is clearly Stoic in origin, and were the last three words left out it might have been written by Zeno himself. It is known that the apostle was a student at Tarsus, a great center of Stoic philosophy. Zeno laid more emphasis on reason and justice, and Jesus laid more on faith and love. The bridge between the two is due largely to St. Paul. He owed much to the Stoics in his emphasis on brotherhood and equality. He transformed these by the transfusion of a new Christian idealism, but the roots go back to Stoicism. In so far as a democracy is a nation of equals—all sons of God—we have the Stoics to thank for the idea, but in so far as democratic institutions "regard all men as spiritually of a kind we have to thank Jesus and Paul." This is the opinion of two eminent modern historians of philosophy,[27] who also recognize the kinship between the Stoics and the Hebrew prophets, with their emphasis on justice, on the consent of the governed, and on the idea of universal law.

(4) THE TEACHINGS OF CHRISTIANITY

Christianity stood and stands for the infinite worth of every human soul; gives convincing evidence of man's divine sonship, as manifested fully in Jesus of Nazareth; and consequently involves the sacredness of personality and of individual conviction. It rejects external force as having any right to control thought, especially in the relationship of the soul with God, whom it reveals as a Father, benevolent in all His dealings with man. Therefore, true democracy and true religious freedom owe an infinite debt to the Founder of the Christian religion. Our ideals of personal character, of social welfare, of the responsibility of the State to advance the common good of all, and of a national goal based on righteousness and exemplifying the love of God and man, could never have existed had it not been for the teaching of the Jewish prophets reaching their climax in Jesus. As we shall see,[28] this definitely Christian foundation of our democracy has been repeatedly emphasized by our statesmen, and when rightly understood is a bulwark of that civil and religious freedom which we consider so essential. Indeed, the Gospels have given us words, phrases, ideas, that are at the very heart of the subject discussed in this work. Such are the Fatherhood of God and the brotherhood of man; the summary of the law; the idea of the Kingdom of God; the golden rule; the conception of "God as a spirit," not exclusively in any one place, or for any one people, but omnipresent, so that "they that worship him must worship him in spirit and in truth"; and the twofold loyalty, to the State and to the Church, with its classic basis, "Render to Caesar

the things that are Caesar's, and to God the things that are God's." These and many similar teachings of the Founder of Christianity have made their definite contribution to our common concepts of religious freedom, of the relations of Church and State, and of the interest of the churches in the social welfare of their fellow men. And it must be remembered that, although some of the teachings of Christianity appear in earlier Greek philosophers, especially the Stoics, and in the Jewish prophets, they had for the first time in the Founder of the new religion their full realization and demonstration. All men might now actually see in the Gospel story the beauty and power of a life dominated by the love of God and of one's fellow men—the latter forming the great human brotherhood which might be transformed into the Kingdom of God. This was ultimately to become the dream of the Christian democracy of the New World. This democracy was based on convictions of the sacredness of personality, the rights and responsibilities of humanity, and the possibility of human progress; all ideals which go back to Christ for their highest expression. Theologians have always recognized this, as well as most historians. Now even the scientists, who largely gave up belief in the distinctively Christian message during the last generation, are beginning to see it clearly again. Writing in 1933, Professor Alfred Whitehead (1861–), Harvard's eminent mathematician and philosopher, called the ethics of Christianity mankind's "most precious instrument of progress." He added that "The progress of humanity can be defined as the process of transforming society so as to make the original Christian ideals increasingly practicable for its individual members."[29]

The part played by St. Paul in applying the Christian religion to the broader needs of men should not be overlooked. He did much to contribute to the theory of human brotherhood. To him Jew and Gentile were all one as far as the message of Christ was concerned. It was due to St. Paul more than to any other person that Christianity was saved from becoming a Jewish sect and developed into a universal religion. The incident recorded in the Book of Acts where he, with Peter's support, insisted that a man did not have to be circumcised before being accepted as a Christian, was of the very greatest importance. So also was the fact that he chose the Gentile world as the scene of his missionary activity.[30]

The great apostle gave a practical demonstration of the idea held by the Stoics and by some of the Jewish prophets of a universal community. To him men are all brothers because they are children of the same God who have been redeemed by Jesus Christ. All men are God's offspring.[31] Paul's universal outlook has been well expressed in a recent history of liberty.

Paul was a Jew, and he had inherited and been educated to the conception of God's mercy and justice as given by Micah and the other Prophets. He was a Greek in edu-

cation and he had been educated to the doctrine of the mystery religions, the association of all men who believed in a community of saints. But he was also a Roman, and as he boasts, a Roman citizen. He had a sense of empire and a sense of universal justice under the reign of universal law. And it is no small part of his appeal to the Roman world that though he preached emancipation from the shackles of the Jewish Law, he appealed directly to a conception, familiar enough to the Stoics and to all educated Romans, of a natural law in the hearts of men, of which governments, when they were adequate, were the expression.[32]

There is a good deal of truth in the same author's point of view that St. Paul was "the first real spokesman of fraternity."[33] He has been criticized because he did not specifically oppose slavery. It is true that he accepted slavery without being an abolitionist in the usual sense of the word; but he did conceive of all men as brothers who should be treated with kindness even though their status in life for the time being might differ, and he would have had no sympathy with Aristotle's idea that some men were inevitably and irretrievably slaves, and that it was better that this distinction between slave and master should be preserved.

He will always be remembered for his many impressive uses of the word liberty: "the glorious liberty of the children of God;[34] "Where the spirit of the Lord is, there is liberty";[35] "the liberty wherewith Christ hath made us free";[36] "Brethren, ye have been called unto liberty";[37] "our liberty which we have in Christ Jesus."[38] In these and other expressions St. Paul not only emphasized the importance of liberty, but the contribution which he felt Christian faith made to its advancement.

The great apostle treated liberty, ἐλευθερία, not only in a political sense, distinguishing the bondman from the freeman,[39] but also in other senses, such as freedom of conscience, freedom from various forms of bondage, especially to the letter of the law, and freedom of the will. A recent writer on the use of the word liberty by St. Paul and the early Church, says:

> To the rise of Christianity we very specially owe an advanced conception of conscience and its corollary, the claim to freedom to act in accord with the behests of conscience. "Am I not free?" cries St. Paul (1 Co 9^1); whilst "Peter and the apostles" (Ac 5^{29}) are heard declaring "We must obey God rather than men." These sayings might serve as watchwords of the new era as viewed from this standpoint (Judaism itself, it should be noted in passing, exhibited in course of time a similar development in its ethical teaching).[40]

It is interesting to see a modern physicist and philosopher appreciating the full significance of the contribution of the early Church to moral reform in Europe. Professor Alfred Whitehead, referring to Christianity, says:

> In its early form it was a religion of fierce enthusiasm and of impracticable moral

ideals. Luckily these ideals have been preserved for us in a literature which is almost contemporary with the origin of the religion. They have constituted an unrivalled program for reform, which has been one element in the evolution of Western civilization. The progress of humanity can be defined as the process of transforming society so as to make the original Christian ideals increasingly practicable for its individual members.[41]

Christian ideals are so much a part of the warp and woof of our life that we sometimes fail to realize their source. It may be well, therefore, to quote a University of Chicago authority on the early history of the Church regarding the socially idealistic aspects of primitive Christianity and its accomplishments in what might be called the social-political field. These are:

Its comprehensive and supreme principle was love of man toward man—brotherliness in feeling, action and thought.

It inculcated the sacrifice of self for the good of others.

It made the common welfare the chief aim of life.

It sought to establish consideration and justice in the social relations of men.

It aimed to diminish the valuation and to check the pursuit of material things.

It sought to control and suppress sex immorality.

It elevated the marriage ideal and practice.

It forbade envy and strife, fraud and theft, drunkenness and reveling.

It censured self-complacency, arrogance, and selfishness in the better class.

It condemned pride, ostentation and hypocrisy.

It placed the social duties above the ritual duties, right conduct and character above worship and ordinance.

It interpreted the will of God in the direction of reasonable living.

It made the individual free, autonomous, responsible.

It rebuked legalism in law and in social administration.

It sought to prevent the domination of the weak by the strong.

It opposed the use of force to accomplish social ends.

It undertook to replace the law and practice of retribution, i.e., revenge, retaliation, by the principle of returning good for evil and overcoming evil with good.

It created so high and free a conception of the right social relations as to disaffect the Christians toward the Roman Government.

It developed local groups of persons throughout the Empire bound together religiously and socially in close fellowship.

It unified Orientals and Occidentals in a real brotherhood, surmounting the barriers of race antipathy and national alignment.

It brought together on a common plane, the rich and the poor, the educated and the ignorant, the prominent and the obscure, the master and the slave.

It welded new social bonds, detaching people from previous groups and associations and uniting them on a higher basis.

It founded a solid, permanent social organization within the Roman Empire that was to survive the latter's fall.

It made life idealistic, hopeful, joyful, and courageous.

It assured men of eternal welfare and a perfect social order in an imminent new age.[42]

This summary was made for a different purpose, and it is therefore all the more significant for our use. It shows that the social and personal ideals incorporated in America's great charters and in the characters of her national heroes were based largely on Christian teachings, although they also owed much to other factors such as Stoicism, especially to its two great Roman exponents, Cicero (106–43 B.C.) and Seneca (*c.* 3 B.C.–A.D. 65), who will be referred to in the next section.

Although Professor Votaw does not use any political words such as "democracy," the democratic basis of life as given in our Federal Constitution and its Bill of Rights, and as summed up in Lincoln's "government of the people, by the people, and for the people," is clearly seen to be implicit.

(5) THE ROMAN EMPIRE AND RELIGIONS

The principal public influences of ancient Rome on this country were in the development of law, even though strictly Roman law holds only in Louisiana. In the field of religion, Rome, prior to the Edict of Toleration under Constantine, which we shall quote in full, did not make a large contribution to American thought.

We have here, then, the case of a single community of men with a genius for organization and government which little by little influenced Italy and the Roman world. In the early days when Rome was a small city-state there was a strongly organized state religion headed by the Pontifex Maximus, who regulated the calendar and the state ceremonial. The State was thought of as a large family, with the eternal fire on the hearth of Vesta as its religious center. The priest was not considered a mediator between God and man, but rather the chosen representative of the people for state worship, and the repository of religious traditions and ceremonies. The colleges of priests survived until the fifth century, when they were doomed by the triumph of the Church.

The public religion was supplemented by private religions, and many rites were performed in the homes which were considered essential to State welfare. Indeed, the worship of household spirits played an important part in daily life, the Romans feeling that they had a sacred obligation to the State that was fostered by propitiating the spirits.

In the first century of our era Augustus (63 B.C.–A.D. 14) did much to revive the ancient cults and to bring in emperor worship with the deification of Caesar.

Foreign cults were also acclimatized in Italy, such as those of Isis and Mithra. Then Greek philosophy, especially Stoicism, and increasingly Christianity, also influenced thoughtful people. But it was only after Rome accepted Christianity through the Edict of Toleration of Constantine (288?–337), and later through the development of the medieval Church, that she developed ideas in the field of religion that were to have their strong influence on America.

The Imperial Constitution of Constantine granting freedom of religion was promulgated as a result of the meeting with Licinius, then Emperor of the East, in Milan in 313. This is the most important contribution of the Roman State to the cause of religious freedom. It is interesting to remember that it was the desire to recognize the claims of Christianity that gave rise to this epoch-making decree. As given by Eusebius in his *Ecclesiastical History,* this reads:

Not long ago we weighed with ourselves, that the liberty and freedom of religion ought not in any case to be prohibited; but that free leave ought to be given to every man, to do therein according to his will and mind. We have given commandment to all men to qualify matters of religion, as they themselves thought good, and that also the Christians should keep the opinions and faith of their religion. But because that many and sundry opinions by the same our first license, spring, and increase through such liberty granted, we thought good manifestly to add thereunto, and make plain such things, whereby perchance some of them in time to come, may from such their observance be let, or hindered. Which, therefore, by prosperous success, I, Constantinus Augustus, and I, Licinius Augustus, came to Mediolanum, and there sat in council upon such things as served for the utility and profit of the common weal; these things amongst others we thought would be beneficial to all men; yea, and before all other things we purposed to establish those things wherein the true reverence and worship of God is comprehended, that is, to give unto Christians free choice to follow what religion they think good, and whereby the same sincerity and celestial grace, which is in every place received, may also be embraced and accepted of all our loving subjects. According therefore unto this our pleasure, upon good advisement, and sound judgment, we have decreed, that no man so hardly be denied to choose, and follow the Christian [observance or religion; but that this liberty be given to every man that he may apply his] mind to what religion he thinketh meet himself, whereby God may perform upon us, all his accustomed care and goodness. To the intent therefore, you might know that this is our pleasure, we thought it necessary to write this unto you, whereby all such errors and opinions being removed, which in our former letters, being sent unto you in the behalf of the Christians, are contained, and which seem very indiscreet, and contrary to our clemency, may be made frustrate and annihilate. Now therefore, firmly and freely, we will and command, that every man have a free liberty to observe the Christian religion, and that without any grief, or molestation, he may be suffered to do the same. These things have we thought good to signify unto you by as plain words as we may, that we have given to the Christians free and absolute power to keep and use their religion. And for so much as this liberty is absolutely given of us

unto them, to use and exercise their former observance, *if any be disposed*, it is manifest that the same helpeth much to establish the public tranquillity of our lives; every man to have license, and liberty to use, and choose what kind of worshipping he list himself. And this is done of us, only for the intent, that we would have no man to be enforced to one religion more than another. And this thing also, amongst others, we have provided for the Christians, that they may have again the possession of such places, in which heretofore they have been accustomed to make their assemblies. So that if any have bought or purchased the same, either of us or of any other; the same places, without either money, or other recompense, forthwith, and without delay, we will to be restored again to the said Christians. And if any man have obtained the same by gift from us, and shall require any recompense to be made to them in that behalf: then let the Christians repair to the president, being the judge appointed for that place, that consideration may be had of those men by our benignity; all which things we will and command, that you see to be given, and restored freely, and with diligence, unto the society of the Christians, all delay set apart. And because the Christians themselves are understood to have had, not only those places wherein they were accustomed to resort together, but certain other peculiar places also, not being private to any one man, but belonging to the right of their congregation and society; you shall see also all those to be restored to the Christians, that is to say, to every fellowship and company of them, according to the decree, whereof we have made mention, all delay set apart. Provided, that the order we have taken in the mean time be observed, that if any, taking no recompense, shall restore the same lands and possessions, they shall not mistrust, but be sure to be saved harmless by us. In all these things, it shall be your part to employ your diligence in the behalf of the aforesaid company of the Christians, whereby this our commandment may speedily be accomplished, and also in this case by our clemency, the common and public peace may be preserved; for undoubtedly by this means, as before we have said, the goodwill and favour of God towards us, whereof in many cases we have had good experience, shall always continue with us. And to the intent, that this our constitution may be notified to all men; it shall be requisite, that the copy of these our letters be set up in all places, that men may read and know the same, lest any should be ignorant thereof.[43]

The most liberal pagan views of religious toleration in the time of the Empire seem to have been held by philosophers who owed much to the earlier thought of Greece. Some examples are worth recording.

The fathers of our republic owed much to certain Roman philosophers who inherited and developed Greek Stoicism, especially to men like Seneca (d. 38) and Marcus Aurelius (121–80). From them came some thoughts and ideals that became part of the higher thought of Western civilization: nobility of character, high ethical purpose, the ideal of self-sacrifice, belief in God and His divine providence, emphasis on virtue as the highest good and on action to make it effective, the need of bringing conduct into conformity with the law of Nature, and the realization of a high and stern sense of duty in public and private life.

As has been frequently pointed out, Stoicism and Christianity had much in common, although the emphasis of Stoicism was more on reason and justice, that of Christianity on faith and love.

They meet to a large extent in the teaching of St. Paul. Indeed, there are so many points of contact between Seneca and the great apostle that a direct connection between the two has often been suggested.

Cicero (106–43 B.C.) was another great name in the Stoic tradition, especially in the field of public policy, where in many ways by recognizing human rights he speaks as a modern man. Although Romans did not go far in the matter of personal as distinct from group religious freedom, being intolerant of religions that did not belong to some recognized national group, we do find the theory of the natural equality of human nature both in Cicero and in Seneca. This is a long step forward from the point of view of Aristotle, and indeed of Plato. Even in *The Republic* everything is based on human inequalities, while the Stoics thought of society as founded on the essential equality of men.[44] It is consequently not by accident that the word which has come to stand for the organization of democratic society on a representative basis is derived from the Latin words *res publica*, given currency by Cicero as a term for the commonwealth. With this interpretation of the fundamental equality of men on which the theory of natural law has been developed, it was almost inevitable that the theory of equality before the law of various religions would ultimately follow.

It was to a Greek philosopher who lived after the great Stoics and who was influenced to some extent by Christianity that we owe what is probably the nearest approach in the Graeco-Roman world to the modern idea of religious freedom. This philosopher was Themistius of Paphlagonia (317?–87), who after a brief sojourn in Rome lived in Constantinople and wrote important commentaries on Aristotle. He was an eclectic in philosophy, a believer in religious syncretism. He defended the rights of the Christians, and taught that God had made men free to accept whatever mode of worship they prefer, and that Christianity and Hellenism were merely two forms of the one underlying universal religion. Indeed, he believed that God took satisfaction out of the variety of homage extended to him. Here is a striking passage from one of his writings:

> There is a domain in which no governing authority can have any efficacy; this is the domain of the virtues, and especially of the religious beliefs of individuals. Compulsion of any kind in this domain can only have the effect of causing hypocritical conversions and confessions of faith. Hence it is much better for the ruler to tolerate all beliefs; since it is only by toleration that civil discords will be removed and it will be possible for the civil law to govern both orthodox and heterodox to the common advantage of the country. Moreover, toleration is a divine law which can never be violated, as God himself has clearly demonstrated His desire for a diversity of religions. . . .[45]

Even these advanced views, however, do not go beyond toleration. This is why Ruffini, to whom I am indebted for the reference to Themistius, says that "One would search in vain in the literature of Greece or Rome for any trace of the idea of religious freedom; . . . The highest affirmations and vindications of liberty of conscience and worship . . . were quite unknown to the whole of classical antiquity."[46]

(6) THE CATHOLIC CHURCH

The general position of the Catholic Church on matters of Church–State relations and religious freedom will be discussed at some length in a later chapter.[47] Here we are concerned with those historical features of Western civilization that had influence, direct or indirect, on the Founding Fathers both in establishing our democratic republic and in providing for religious freedom. At first thought it would probably seem to most non-Catholics that the American republic represented a complete break with the traditions of Rome. Attention might be called with some truth to the Church's concentration of ultimate power in the hands of one man; its rigorous emphasis on dogmatic uniformity; its putting down, sometimes ruthlessly, of many "heretical" movements; its tendency to sympathize with monarchical and conservative political institutions, and to oppose "liberalism" in most of its well-known forms; and its historic antipathy to the distinctively Protestant views held by most of the citizens who planned the new nation. Evidence could be found to show that all these tendencies had been prominent historically, and that they represented carefully thought-out convictions. But there is another side. There have always been certain factors in the Catholic Church containing seeds of freedom, although they have not represented the dominant tradition. I have in mind such things as the interest in mysticism on the part of many of the saints, tending to lay more emphasis on religious experience than on dogma; the latent democracy which has shown itself in the great councils of the Church; the emphasis by canonists and theologians on the natural rights of the individual and on the supremacy of conscience, as in the great saying of Thomas Aquinas, *conscientia semper sequenda est;* the interest in the welfare of the poor, the sick, and the afflicted; the development of various sects, movements, and groups outside the main tradition and not always approved by the Church, but which kept alive a certain independence of thinking, such as the Donatists and Montanists in the early Church, monasticism, and the great orders of the Franciscans and the Dominicans; movements which later led to revolt, such as the unecclesiastical tendencies of Waldensians, Hussites, and Lollards; the retaining of the Uniat Oriental churches in communion with Rome, with more than 5,000,000 mem-

bers, which, though many of them have rites and liturgies of their own, conduct their services in other languages than Latin, permit the marriage of priests, and have considerable differences in matters of ecclesiastical law and discipline; and the Church's historic contribution to humanism, especially classical scholarship, philosophy, and the arts.

It has been frequently said that in spite of its theological and ecclesiastical authoritarianism, the Roman Catholic Church, as long as it continues to produce an occasional saint such as a St. Francis or a Father Damien, will hold the respect and gain the support of men of ability and vision. The same may be said of liberals in matters of social reform. We have seen arise from time to time liberal leaders in the Church such as Antoine Frédéric Ozanam (1813–53), leading spirit in the founding of the St. Vincent de Paul Society—a lay organization deeply respected for its charitable work in our cities; Jean Baptiste Henri Lacordaire (1802–61), editor of *L'Avenir* (a magazine whose views were condemned by Rome in 1832), apostle of Christian democracy, and eloquent advocate of "God and Freedom," who was kept by events in France from carrying out his plan to make New York his home; and Désiré Joseph Mercier (1851–1926), the great Belgian cardinal of our day who visited America and was admired by its people for his tolerance, spirituality, and courage. We shall see in later sections[48] that the American Church has had several outstanding men of this character.

A brief historical review of certain tendencies will be necessary for the understanding of the contribution the Catholic Church has made to American constitutional and civic ideals, especially as these affect religious freedom.

In the Apostolic Age the Church was occupied with preaching the gospel and organizing Christian believers. It was a small and relatively weak body faced with the organized force of Roman paganism. It did not wish to persecute others—the great early Greek fathers of the East were relatively tolerant—and could not if it would, but as it gained in power there were advocates of the use of force, especially in the West. Tertullian (*c.* 155–*c.* 230) in his *Ad Scapulam* was perhaps the first in Western Europe to show cogently that Christianity should not and could not be aided by political power or the use of force. Lactantius (*c.* 260–*c.* 327) took a similar view, and probably went further than the other early Church Fathers in advocating religious toleration. Hilary of Poitiers (c. 315–67) is another we should honor, because he urged such toleration on the Emperor Constantine as the only remedy capable of composing serious difficulties among the various religious denominations in the State.[49]

The rise of the Christian Church as a distinct institution independent of the State is recognized as a revolutionary event in the history of Western Europe.

It implied that double loyalty in which loyalty to the Church was often put first. This sowed the seed of much future difficulty. Yet it was assumed that the two could work in co-operation and harmony.

St. Augustine of Hippo (354–430) was an early advocate of tolerance, but, unfortunately for the future of the Church, changed in his later years, abandoning the principle of liberty of conscience and invoking the aid of the civil power against the Donatists. It is to him that we owe for the first time the use in support of religious compulsion, of Christ's words in St. Luke's Gospel 14.23, in the parable of the great supper, where the lord said unto the servant: "Go out into the highways and hedges, and compel them to come in, that my house may be filled"—a saying which, separated from its original context and misinterpreted, has been often used to justify acts of intolerance.

Augustine also formulated the question which has gone down through the ages: "For which is worse, the death of the soul or the liberty of falling into error?—*Quae est enim peior mors animae quam libertas erroris?*" Indeed, he laid the foundations of the classical doctrine of the Roman Catholic Church to the effect that when error prevails, as when the Church is in a minority, it is right and proper to invoke liberty of conscience, but when the truth, that is, what the Church believes to be the truth, predominates, it is perfectly right and just to use coercion. As a result of this teaching, "the principle that religious unity ought to be imposed in one way or another dominates the whole of the Christian Middle Ages and finds a concise and rigorous sanction in civil as well as in ecclesiastical legislation."[50] This was the attitude of the Council of Ephesus as early as 431 which condemned Nestorianism. From about this time on, any deviation from the orthodox teaching of the Church was not only considered heresy but was punishable as a public crime.

The theory of the union of Church and State, which the Church fostered, implying that all not in the one Established Church were heretics and could not expect full civil rights, became a deep-rooted European conviction. It was the accepted basis of social stability in the years of the falling Roman Empire, and remained almost unchallenged in most of Europe for over a thousand years after Constantine. Even the Protestant Reformation did not at the outset do much to disturb it; "one State, one Church" continued the norm in the new national groupings. The theory probably aided the cause of public order when it became firmly established, but it meant the giving up of the primitive Christian conception that the Church was composed only of those of individual religious convictions who had the independence to cast in their lot with the new movement. Speaking generally, the original idea was not restored until the American conception of Church–State separation and entire religious freedom gained sway.

This theory is well illustrated in the Code of Justinian (529), the *Decretum* of Gratian (*c.* 1140), which supplied the kernel of the canon law, and other authoritative utterances of Church and State, as both united to suppress heretics. They reached their climax in the legislation of Popes Innocent III (pope 1198–1216), Gregory IX (1227–41), and Innocent IV (1243–54), and in the establishment about the middle of the thirteenth century of the Inquisition. There are only relatively few prominent medieval exceptions to this belief in the extirpation of heresy by force, of which altogether the most notable is that of Marsilius (Marsilio) of Padua (*c.* 1270–1312), whose great book *Defensor Pacis* appeared in 1326. This holds that all power, including that of the Church, arises from the people, who name bishops and elect priests, while only ecumenical councils, not the pope, have the right to legislate, and that even the Church is subordinate to the State. From our standpoint, however, his most important teaching is against using force in proclaiming the gospel. He denies that the ecclesiastical authority has any power of coercion,[51] and shows that there are fields where the State is supreme. He was elevating the questions and quarrels existing between pope and emperor into a profound and permanent set of principles destined to have immense influence on the course of secular government. The idea of government for the common interest, by common consent, and on high human and secular principles; the beginnings of the notion of natural law and natural rights as principles of democratic government—these had their first modern statement in the writings of Marsilio of Padua in the midst of a conflict between a German emperor and a French pope in the fourteenth century.[52]

As far as the supreme importance of the Church in the life of the world, and the consequent Church–State relations, are concerned, the classic for a thousand years was the *De civitate Dei* of St. Augustine. This was begun in 413, three years after the fall of Rome to the barbarians, and completed in 426. It was a great work in the philosophy of history, showing that the Christian Church—"the city of God which remaineth"—was the most important institution in the world, to whose God all civil honors were due.[53]

Augustine's theory of Church–State relations is carried out under the simile of the Two Cities—the heavenly city and the earthly city. He traces the influence of both through history. A few brief quotations will show his general point of view.

> But the earthly city, which shall not be everlasting (for it will no longer be a city when it has been committed to the extreme penalty), has its good in this world, and rejoices in it with such joy as such things can afford.[54]

> . . . These things, then, are good things, and without doubt the gifts of God. But if they neglect the better things of the heavenly city, which are secured by eternal victory

and peace never-ending, and so inordinately covet these present good things that they believe them to be the only desirable things, or love them better than those things which are believed to be better—if this be so, then it is necessary that misery follow and ever increase.[55]

. . . The earthly city, which does not live by faith, seeks an earthly peace, and the end it proposes, in the well-ordered concord of civic obedience and rule, is the combination of men's wills to attain the things which are helpful to this life. The heavenly city, or rather the part of it which sojourns on earth and lives by faith, makes use of this peace only because it must, until this mortal condition which necessitates it shall pass away. Consequently, so long as it lives like a captive and a stranger in the earthly city, though it has already received the promise of redemption, and the gift of the Spirit as the earnest of it, it makes no scruple to obey the laws of the earthly city, whereby the things necessary for the maintenance of this mortal life are administered; and thus, as this life is common to both cities, so there is a harmony between them in regard to what belongs to it. . . .[56]

. . . Even the heavenly city, therefore, while in its state of pilgrimage, avails itself of the peace of earth, and, so far as it can without injuring faith and godliness, desires and maintains a common agreement among men regarding the acquisition of the necessaries of life, and makes this earthly peace bear upon the peace of heaven; for this alone can be truly called and esteemed the peace of the reasonable creatures, consisting as it does in the perfectly ordered and harmonious enjoyment of God and of one another in God. . . .[57]

This point of view has ever since prevailed in the Roman Catholic Church, although attempts have been made to readjust and even slightly modify it to meet new conditions.

Of these attempts in recent centuries to adjust the historic views of Augustine to post-Reformation conditions in developing a theory of the State consonant with the rights of the people, perhaps the most interesting for our purpose were those of two Jesuit theologians, Francisco Suárez (1548–1617) and Cardinal Roberto Bellarmine (1542–1621), both of whom emphasized the importance of the will of the people in their theories of the State. Suárez taught that earthly power is rightly to be conceived as held by the body of men and that kingly power is entirely derived from them, because all men are fundamentally equal before God. This theory has been generally accepted by those Catholic theologians who have attempted to justify democracy from the standpoint of the Roman Catholic Church. Bellarmine was a good deal of an ultramontane in Church matters, but, starting from Thomas Aquinas' analogy of the body and soul, he taught that the State was the body of which the Church was the soul. This showed the interrelation which should exist between them. His views on the powers of the people, which were, however, mainly limited to the choice of

the sovereign and did not include democracy of government, were probably known to Jefferson; who had in his library a copy of Sir Robert Filmer's defense of monarchy, *Patriarcha or The Power of Kings* (written in 1648, published in 1680), which contains some brief references to the cardinal's views. There was also a copy of it in the Princeton Library, where James Madison may have seen it. There is no clear evidence, however, that Bellarmine exerted any influence on these American statesmen.[58]

Gaillard Hunt (1862–1924), to whom the theory of Bellarmine's influence on Jefferson and our American idea of liberty as inherent in man is mainly due—often referred to by contemporary historians as the "Bellarmine myth"—quotes this summary of Bellarmine's views as given in Filmer's *Patriarcha*:

To make evident the Grounds of this Question, about the *Natural Liberty of Mankind,* I will lay down some passages of Cardinal *Bellarmine,* that may best unfold the State of this controversie. *Secular or Civil Power* (saith he) *is instituted by men; It is in the people, unless they bestow it on a Prince. This Power is immediately in the whole Multitude, as in the subject of it; for this Power is in the Divine Law, but the Divine Law hath given this power to no particular man. If the Positive Law be taken away, there is left no Reason why amongst a Multitude (who are Equal) one rather than another should bear Rule over the Rest. Power is given by the multitude to one man, or to more, by the same Law of Nature; for the Commonwealth cannot exercise this Power, therefore it is bound to bestow it upon some One man or some Few. It depends upon the Consent of the multitude to ordain over themselves a King Counsel or other Magistrates; and if there be a lawful cause the multitude may change the Kingdom into an Aristocracy or Democracy.* Thus far *Bellarmine;* in which passages are comprised the strength of all that I have read or heard produced for the *Natural Liberty of the Subject.*[59]

In the first sentence of the *Patriarcha,* Filmer, who is vigorously opposing the views of the cardinal on man's natural freedom, thus epitomizes them:

Since the time that School-Divinity began to flourish there hath been a common opinion maintained, as well by Divines, as by divers other Learned Men, which affirms.

Mankind is naturally endowed and born with Freedom from all Subjection, and at liberty to choose what Form of Government it please: And that the Power which any one Man hath over others, was at first bestowed according to the descretion of the Multitude.

This Tenet was first hatched in the Schools, and hath been fostered by all succeeding Papists for good Divinity. The Divines also of the Reformed Churches have entertained it, and the Common People everywhere tenderly embrace it, as being most plausible to Flesh and Blood, for that it prodigally distributes a Portion of Liberty to the meanest of the Multitude who magnifie Liberty, as if the height of Human Felicity were only to be found in it, never remembering that the desire of Liberty was the first cause of the Fall of Adam.[60]

Bellarmine's views regarding the State are mostly given in two works, the *Disputationes de Controversiis Religionis Christianae Fidei adversus Haereticos* and *De Potestate Summi Pontificis,* among the most influential of Catholic writings of recent centuries. The former work carried such weight at the time of the Reformation that special chairs were established in some Protestant countries to answer it.[61] Its author was far from being a believer in democracy or in religious liberty, but he recognized the right of a people to choose their own king and to have him deposed—the latter only if he opposes the pope and is excommunicated. In general he supported the Vatican in its controversies with the civil power, although not satisfying all ultramontanes, as he claimed that the pope's right to depose an unworthy ruler and to be a controlling factor in State affairs was indirect rather than direct. In essence he held that the pope's power was only spiritual.

On the whole, looking at the matter from the standpoint of our American theory of government, we can feel grateful for his fine statements as to man's natural rights to freedom; but beyond this he can hardly be considered as an important factor influencing even indirectly our system of government.

As Gaillard Hunt's presentation of the case for Bellarmine's influence on American constitutional ideals has not unnaturally been made much of by Catholic historians, it seems well to quote his exact statement, which is not nearly so definite and conclusive as has frequently been reported.

> Were Mason and Jefferson conscious of their debt to Bellarmine [he queries at the close of his study], or did they use Filmer's presentation of his doctrine without knowing that they were doing so? Did the Americans realize that they were staking their lives, their fortunes and their sacred honor in support of a theory of government which had come down to them as announced by a Catholic priest? We cannot answer these questions, but it should be a satisfaction to Catholics to know that the fundamental pronouncements upon which was built the greatest of modern revolutions, found their best support in the writings of a Prince of the Church.[62]

Undoubtedly the cardinal's name and views were known to some of the Founding Fathers, but his influence upon them, if any, was certainly not in any way comparable to that of Sidney, Locke, and some other philosophers who were more nearly in the line of the English tradition of the Bill of Rights and constitutional government. Surely Monsignor Guilday (1884–1947), generally fair and responsible in his treatment of American Catholic history, goes far beyond the known or probable facts when he says that to Bellarmine "can be given the credit for the theory of government enshrined in the [Virginia] Bill [of Rights], as well as in its subsequent imitation, the Declaration of Independence."[63] But this was written in 1922, and it is most unlikely that he would repeat the statement today if living. The latest Roman Catholic study of the subject discredits

this point of view, taking the ground that Bellarmine had no noticeable influence upon Jefferson or the Declaration.[64]

The fact of the matter is that, although Catholic theologians did much to develop the natural-rights theory, there is no evidence that any of the fathers of the republic, who spoke gratefully of Locke, Montesquieu, Sidney, and other political philosophers, ever mentioned any special obligation to Bellarmine, or were indeed directly influenced by him in framing the Virginia Bill of Rights, the Declaration of Independence, or the Constitution of the United States. The clauses in the latter and its amendments guaranteeing separation of Church and State were far from Bellarmine's views.

According to Augustine and influential Catholic interpreters such as Bellarmine who followed his general lead, it was to be only through the instrumentality of the Christian Church when it became powerful enough to make its impact felt on the State, and through co-operation between the two, that society could be renovated. Lord Acton felt the truth of this historically. In his essay on "Freedom in Christianity," written two generations ago, after referring to the effect of the barbarian invasions on the Roman Empire, he said: "The spirit of immemorial paganism which had saturated ancient society could not be exorcised except by the combined influence of Church and State. . . ."[65]

The Church, in spite of the emphases of the more liberal Catholic thinkers from the days of Origen to those of Erasmus, frequently departed from primitive Christianity and approached all too nearly the point of view of a despotic State, making extreme authoritarian claims; and yet it made constructive contributions in our field. It developed in its greatest medieval days a sense of social responsibility which was in many ways magnificent, including all the higher manifestations of life in the scope of its influence, and frequently of its control. The care of the sick, the aged, and orphans; the founding of schools and universities, and of guilds of artists, workmen, or tradesmen, self-governing, voluntary groups or brotherhoods for mutual assistance with some religious or commercial aim; the amelioration of the lot of the slave;[66] the prevention of grave political and economic abuses; the protection of travelers; the advancement of art and culture; the mitigation through the "Truce of God" and other expedients of some of the ills of war; the promotion of understanding among nations; the improvement of the status of women and of the economic condition of workmen—such were some of the ways in which the Catholic Church showed effectively how religion could aid the State in promoting social welfare. It also, in spite of its imperialistic organization, promoted, either directly or indirectly, some phases of the democratic ideal, such as bringing rich and poor together in the churches for public worship, permitting in the early days of the Church the election of bishops by broad suffrage, developing the guilds and

providing for the social needs of the medieval city, formulating theories of constitutional government and rights, establishing the councils of the Church—which Lecky calls "one of the first great experiments in representative government"[67]—and recognizing the possibility of the humblest peasant with character and ability rising to be cardinal or pope.

No finer statement of this last-named contribution of Catholic tradition to the democratic spirit was ever made than by an American president, Woodrow Wilson (1856–1924). In spite of his strong Presbyterian background, he had a full realization of the significance of the fact that the highest offices of the Church were open, irrespective of birth or position, to men of talent. In the course of an address which he delivered in 1912 on *The New Freedom,* he said:

> There is one illustration of the value of the constant renewal of society from the bottom that has always interested me profoundly. The only reason why government did not suffer dry rot in the Middle Ages under the aristocratic system which then prevailed was that so many of the men who were efficient instruments of government were drawn from the church,—from that great religious body which was then the only church, that body which we now distinguish from other religious bodies as the Roman Catholic Church. The Roman Catholic Church was then, as it is now, a great democracy. There was no peasant so humble that he might not become a priest, and no priest so obscure that he might not become Pope of Christendom; and every chancellery in Europe, every court in Europe, was ruled by these learned, trained and accomplished men—the priesthood of that great and dominant body. What kept government alive in the Middle Ages was this constant rise of the sap from the bottom, from the rank and file of the great body of the people through the open channels of the priesthood. That, it seems to me, is one of the most interesting and convincing illustrations that could possibly be adduced of the thing that I am talking about.[68]

This brief account of the relations of the Catholic Church to democratic movements in Church and State should not be closed without reference to the two greatest names in the history of the Church since St. Augustine, namely, St. Francis of Assisi (1182–1226) and St. Thomas Aquinas (*c.* 1225–1274). Neither contributed directly to the cause of religious freedom or to the separation of Church and State, but both represented certain tendencies which should be included among the factors preparing for our form of constitutional government and our conception of Christian service.

St. Francis stood pre-eminently for belief in the common man and interest in his well-being. The Franciscan movement was full of hope for the masses, based, as is well known, on the command of Jesus in Matthew 10.7–10, when He sent out His twelve apostles to preach and to heal, and told them to announce that the "Kingdom of Heaven is at hand." The main purpose of the new religious order was to alleviate the misery of the distressed and the lot

of the poor, and with this in mind it adopted the well-known vow of poverty. St. Francis rediscovered Christianity as an experience in which the humblest people might participate as they tried to imitate the spirit of Christ. The original system of government, according to which all decisions were made by popular chapters, attended by the brothers on the basis of pure democracy, was deviated from later, but the principle of representative democratic government continued. Although the Franciscan movement was primarily one of evangelization and personal help, it must be remembered that the Gray Friars rendered many public services by which the State profited, such as through founding hospitals and leper houses, the introduction of water supplies and other works of public utility, and the carrying on of relief activities, including the making of loans to the poor, especially in the towns. They also did much through their preaching and their poetry to develop the use of the vernacular, and their preaching was occupied with the moral obligations of daily personal and community life, rather than with emphasis on dogma.

A recent writer has well expressed the relation of the order to democratic tendencies in the State:

> The principal political connotation of the Franciscan movement was one which the age was hardly prepared to develop into a body of formal doctrine. That democratic spirit which the movement released in the masses everywhere—the vivid sense of human equality and of the significance of the individual—necessarily remained an intangible force affecting the outlook of men but debarred from integral expression. Nevertheless, in the history of Catholic absolutism the Franciscan movement stands as the first powerful assertion of the rights of the individual against church authoritarianism in the long series of explosions which led to the final fulmination of the Reformation. . . .[69]

We in the United States should feel specially grateful to the Order of Friars Minor, for they were not only pre-eminent in the discovery, exploration, and settlement of much of our territory, but they were mainly responsible for mission work among the Indians of the Southwest. Many beautiful old mission churches and the name of one of the leading cities of California recall to us the influence of "San Francisco." They were also active in the French missions of the Mississippi region. Junípero Serra (1713–84) was perhaps their greatest American hero; the man mainly responsible for the conversion, although in some cases little more than nominal, of most of the Indians in the coastal areas of central and southern California.

One of the glories of the Catholic Church is that it has appealed to men of very different types. It would be hard to find two minds much more different than those of St. Francis and St. Thomas. St. Francis was not a philosopher, but a saint of Christlike spirit, with amazing imagination, consecration, and

common sense. He was an inspired spirit close to nature and God, whose whole emphasis was on the service of his fellow men through the heart and the will. St. Thomas was a philosopher, who took the whole field of knowledge in his scope. Probably no such encyclopedic mind, combining breadth and depth, has appeared in Western civilization since the time of Aristotle, whose thought he did much to integrate with the philosophy of the Church. St. Thomas was not only a great Christian theologian but he was a philosopher, interested in all intellectual, political, economic, and social questions, who wished to consecrate a logical mind to their solution. His *Summa Theologica* (1267–73) is considered the high-water mark of scholastic philosophy, and has become the classic textbook of the Roman Catholic Church. It is divided into three main parts, dealing with God; man and his approach to God; Christ and the Church. Reason, revelation, and faith are given their due part in determining the truth.

As to government, Aquinas recognized the necessity of the State, but asserted that all civil authority is derived from God, and that under ordinary circumstances it becomes lodged in particular persons only through the consent of the people. He felt that the ideal form of government combined much in monarchy, aristocracy, and democracy, and held that all citizens should have some share in it. He believed that law and legislation have no validity when contrary to the natural law, and that public welfare, including that of all classes and individuals, must be regarded. He was quite modern in his recognition of the scope of legislation, including labor, commerce, health, education, morals, and other elements, although recognizing that it should not attempt to try to cover in detail all matters. He well knew its limitations in dealing with vice and other forms of evil. He laid emphasis on education as essential both to the welfare of the individual and of the State, and recognized that it should comprise training of all the faculties, especially the religious, and that it might be fostered, as far as necessary, by legislation.

St. Thomas strongly opposed what has come to be one of the characteristics of modern totalitarianism; namely, the idea that the individual exists for the State. He recognized that man is not "all citizen." "Man is not subservient to the civil community to the extent of his whole self, and all that he is and all that he has." Civil authority is a natural means to a natural end, and has its limitations, for the State cares for its members collectively and only for the individual in his collective aspect. It is in caring for the individual that the Church and the family have their great opportunity and responsibility.[70] Aquinas felt that the meeting of individual needs must be considered of prime importance, as all men are endowed with certain natural rights based on natural law, which is "nothing else than the rational creature's participation in the

eternal law."[71] In this respect much in Jefferson's Declaration of Independence would have appealed to him. He accepted slavery, but recognized that the slave has certain natural rights which cannot be violated, such as the right to life, sustenance, and normal family relations. He considered the State the body of which the Church was the soul, and to him there was of course only one Church.

As to religious toleration, Aquinas shared the views of his time in seeing in heresy a fundamental evil. He defines it in the *Summa* as "a species of infidelity in men, who having professed the faith of Christ, corrupt its dogmas." His views on this subject have ever since carried so much weight in the Church, that it is necessary to know them if we would understand some of the anti-Catholic movements which, as we shall see later, have caused serious Church–State conflicts in this country.

> The right Christian faith consists in giving one's voluntary assent to Christ in all that truly belongs to His teaching. There are, therefore, two ways of deviating from Christianity: the one by refusing to believe in Christ Himself, which is the way of infidelity common to Pagans and Jews; the other by restricting belief to certain points of Christ's doctrine selected and fashioned at pleasure, which is the way of heretics. The subject-matter of both faith and heresy is, therefore, the deposit of the faith, that is, the sum total of truths revealed in Scripture and Tradition as proposed to our belief by the Church. The believer accepts the whole deposit as proposed by the Church; the heretic accepts only such parts of it as commend themselves to his own approval. The heretical tenets may be adhered to from involuntary causes: inculpable ignorance of the true creed, erroneous judgment, imperfect apprehension and comprehension of dogmas: in none of these does the will play an appreciable part, wherefore one of the necessary conditions of sinfulness—free choice—is wanting and such heresy is merely *objective,* or *material.* On the other hand the will may freely incline the intellect to adhere to tenets declared false by the Divine teaching authority of the Church. The impelling motives are many: intellectual pride or exaggerated reliance on one's own insight; the illusions of religious zeal; the allurements of political or ecclesiastical power; the ties of material interests and personal status; and perhaps others more dishonourable. Heresy thus willed is imputable to the subject and carries with it a varying degree of guilt; it is called formal, because to the material error it adds the informative element of "freely willed."[72]

Such is heresy from the Roman Catholic standpoint. Schism, which generally also involves heresy, is, according to St. Thomas, separation from the unity of the Church, a sin of which, from the Catholic standpoint, all Protestants are guilty.

The influence of Aquinas has always been greater than that of any other systematic thinker in the Catholic Church, largely because his views have been expressed with such extraordinary clarity in his *Summa.* In recent years, and

especially since the commendation of this work by Leo XIII in his encyclical *Aeterni Patris* (1879), there has been a revival of his views which has influenced profoundly the leading Catholic thinkers of Europe and America.[73]

Historically there had been two incidents in the progress of liberalism in Church-State relations on the part of the Catholic Church, prior to the adaptation of the Church to the conditions of the American Constitution, that are worthy of note. I refer to Gallicanism and the Patent of Toleration of Emperor Joseph II of Austria. The first is the more important, as it was due to direct agreements with the papacy, although, of course, not instituted by the latter. Gallicanism is the general theory formerly current in the Roman Catholic Church in France (the Gallican Church) that it had a certain degree of autonomy and independence of the papacy. The first formal declaration of it was in 1438, when by the Pragmatic Sanction of Bourges the papal power in France was limited.

In 1682 the French Church maintained that Gallicanism included these features: that kings are not subject to the pope; that the pope must obey an ecumenical council; that the pope may not interfere with the "ancient liberties of the Gallican Church"; and that the decrees of the pope are potent only when they agree with the whole Church. This understanding with France was of course unsatisfactory to Rome, and Rome caused its withdrawal a decade later. Its general principles continued until the French Revolution; Bossuet (1627–1704), the Bishop of Maux and an eloquent preacher, being its best known exponent.[74]

The other notable example of a liberal attitude on Church-State matters within the Catholic Church was the case of the Emperor Joseph II of Austria, who by the Patent of Toleration issued by him in 1781, although providing that the Catholic religion should preserve its position as the dominant cult, gave the Lutherans, the Reformed, and the Uniate Greek faiths toleration, and their members all civil rights.[75]

The emperor attempted to create a national church in Austria, built on the Gallican principles advocated by Johann Nicolaus von Hontheim (1701–90), Auxiliary Bishop of Trier. These came to be known as Febronianism, after Febronius, the name under which Hontheim wrote in 1763 his significant work *Justini Febronii Jurisconsulti de Statu Ecclesiae et legitimâ potestate Romani Pontificis Liber singularis ad reuniendos dissidentes in religione christiana compositus.* By diminishing papal prerogatives—making the pope subordinate to general councils, and with his power confined to administration and unification—he attempted to reunite Protestants with the Church.[76]

The attempt of Joseph II in Austria, followed by that of his brother, Leo-

pold I, in the Grand Duchy of Tuscany, was of great significance. The pope did not approve these plans, but the emperor succeeded in getting from him some further modifications of policy, such as permission for priests to officiate at mixed marriages without definite commitment as to bringing up the children in the Catholic Church.

These experiments of national churches in full communion with Rome, but having a considerable measure of self-government, may have their important bearings on the development of the Roman Catholic Church in this country. They provide modern precedents by which Catholics, in at least two countries, France and Austria, have attempted plans to adjust themselves to local needs and to eliminate some features of control from Rome in matters of policy to which so many in the modern world take exception.

These groups may also take encouragement from the fact that it can be proved through a documentary study of history that the Church has been losing political influence since the Peace of Westphalia (1648), at the close of the Thirty Years' War between Protestants and Catholics, and that states have increasingly declined to hear the "protests" of the papacy against international agreements being reached without its consent. This process of secularization of international politics, as distinct from ecclesiastical control, found its climax in the Lateran Treaty of 1929, when the Church gave up its rights in such matters, having come to the conclusion that further protest would be ineffective and that its future influence lay in the moral and religious spheres. Professor Carl Eckhardt, in his *The Papacy and World-Affairs,* refers to the significance of this treaty.

> That Accord marked the end of papal antagonism to the secularization of politics. The pope agreed to remain out of international politics, except when invited to participate; but he would not yield his right and duty to moral and spiritual leadership in the world, and, as has been observed in the preceding chapter, since 1878 he has been increasingly active in broad constructive social leadership.[77]

Roman Catholic scholars realize that the days have passed when a Catholic State can prescribe Protestant worship or a Protestant State prescribe Catholic worship. *The New Catholic Dictionary* ends its article, "Freedom of Worship," with these heartening words referring to the post-Reformation period:

> . . . Religion and politics were unfortunately inextricably mixed. Church and State were so united that disloyalty to one was disloyalty to the other. One could not be a heretic without being a traitor. It is to be hoped that we have progressed beyond such a condition.[78]

Don Luigi Sturzo (1871–), the author of a stimulating work on *Church*

and State, and an exponent of Christian social democracy and religious freedom, has recently traced the liberal tradition in his communion.[79] Among those whose pioneer work of bridging the gap between modern democracy and the Church seem to him most significant are the Abbé de Lamennais (1782–1854; the Dominican preacher, Jean Lacordaire (1802–61); Count de Montalembert (1810–70); Antoine Frédéric Ozanam (1813–53), whose work is considered of special importance in the history of Christian democratic thought; Alessandro Manzoni (1785–1873), Italian man of letters; Father Gioacchino Ventura (1792–1861); Bishop Wilhelm von Ketteler (1811–77), distinguished German social reformer; Cardinal Manning (1808–92), who took the ground that "The future belongs to Democracy"; Cardinal Mermillod (1824–92) of Switzerland, founder of the "Union Catholique d'études sociales et économiques"; Cardinal Gibbons (1834–1921); Pope Leo XIII (1810–1903, pope from 1878 on); and others. The American would be inclined to add to the list some other Catholic leaders such as Bishop John Spalding (1840–1916), Cardinal Mercier (1851–1926), Archbishop John Ireland (1838–1918), and the late Cardinal Hinsley, Archbishop of Westminster (1865–1943). It will be noticed that the liberal modern movement started with laymen and a few priests, but that more recently some monsignors, bishops, and cardinals have joined the group, and at least one pope. The development of an intelligent social conscience in the Roman Catholic Church, alive to the needs of an increasingly democratic age, has been slow until recently, but probably not slower—at least in England and America—than among most conservative Protestant bodies.

The Roman Catholic Church, in the opinion of most impartial students, has made tragic mistakes by exaggerating its claims to authority and obedience to the letter of its laws; by opposing full religious freedom in dominantly Catholic countries; by subordinating at times spiritual interests to worldly ones; by trying to force men's thinking into the same mold, as in the Inquisition; by making the pope and the hierarchy too exclusively dominant, with relatively little consideration of the views of clergy and laity; by engaging so actively in matters political, that the Vatican was forced to order the suppression, in 1773, of what was in many ways a great missionary and educational organization, the Society of Jesus; and by identifying itself all too often with the cause of reaction in opposing liberal and democratic movements.

But let us close this section by thinking of the constructive contributions of the Church, brought out by President Wilson as quoted above. We must also not forget that England was still Catholic, and the Protestant Reformation was still centuries away, when the first great charter of our liberties, Magna Charta, was wrung from an unsympathetic monarch; and that in modern times the

Church has had, in addition to countless devoted priests, some eminent leaders in the field of Christian and democratic social thought.

In general, however, the position of the Catholic Church as to Church–State relations has remained, *in theory*, substantially that developed in the Middle Ages, of which the classic expression was that formulated by St. Augustine, which has been discussed earlier in this section, and later modified by Cardinal Bellarmine (1542–1621).[80] The developments in the United States as a result of the adoption of Federal and state constitutions involving complete religious freedom will be dealt with later. We shall also consider some modifications *in practice* which have resulted, largely due to external events, since the early days of the nineteenth century.[81]

On the specific subject of religious freedom there is room for question as to whether the contribution of the Christian Church as such has in past ages been on the whole good or bad. Where the teachings and example of Christ have been followed in spirit it has meant more tolerance and freedom, but where these have been largely forgotten and an ecclesiastical organization of whatever name has tried to force its views so as to save souls from perdition it has been unfortunate. In the sections of this work dealing with modern times we show how the Christian factor has generally made a plus contribution not only to social welfare but to the spirit of freedom; and the latter is the inevitable result of adherence to the implications of the fundamental Christian truths of the Fatherhood of God and the resulting brotherhood of man.[82]

But there are writers, who, considering the historic influence of organized Christianity, have come to emphasize the other side. Such is De Ruggiero. In fairness to his views they are here quoted:

> The antagonist in the major struggle of mankind for religious freedom has been Christianity, which accentuated the elements of intolerance included in its Hebraic heritage and supplemented them by the introduction of new and potent incentives: the idea of a universal mission, a rigid dogma, the conception of the church as an indispensable mediator between God and man. The process by which these intrinsic bases for intolerance were reenforced by an external legal sanction was begun in the fourth century when, with the adoption of Christianity as the official religion of the Roman Empire, the church entered upon that phase of its evolution which ended in its attainment of a preponderant position in western politics and civilization. . . .[83]

This statement is perhaps true, as far as the organized Church itself is concerned, for much of the period from the fourth to the eighteenth century which the author was considering; but it was nonetheless rendering large service to individuals and society, and saving the seeds of Christian and classic ideals which when cultivated were to aid enormously the cause of true liberty.

(7) THE RENAISSANCE—ERASMUS

The Renaissance, extending in general from the fourteenth century to the sixteenth, was the period of transition between the medieval and the modern world. It made the Reformation possible, and, through its emphasis on the worth and dignity of the individual man, helped to prepare the ground for democracy, although its own tendencies were aristocratic. It developed a culture that was often independent of the Church, and laid emphasis on the latent creative power of human personality; the capacity for great adventures and achievements in the fields of thought and action, not only by the clergy but by laymen. It also, by emancipating the human spirit from the excessive control of ecclesiastical authority, paved the way for the separation of Church and State. Its rediscovery of the Greek language and its revival of Greek culture, with its return to the study of the democracies and city-states of Greece, was a highly important factor. We cannot understand religious freedom as it is today without knowing something of the great work of Desiderius Erasmus (1467–1536) and other leaders of the Renaissance. They prepared the way for the humanistic enlightenment of the eighteenth century, with both its values and its defects. Many of them were devout Catholics, but they broke with the dead weight both of obscurantism and dogmatism, and with those tendencies inimical to independent nationality and civic and religious liberty that later came to be known as ultramontanism.

Erasmus, the greatest figure in the later days of the Renaissance, wrote relatively little about toleration, other than various obiter dicta, but what was more important, he practiced it, and attacked intolerance. He always opposed dogmatism in every form, being in this, as in most respects, a thoroughgoing Christian humanist with the classics as his background. It was the *philosophia Christi* as a way of life that appealed to him rather than creeds, ecclesiastical organization, or evangelism. He disliked violence and extremes in every form. He was a man who stood for peace in Church and State. To him any kind of persecution was unchristian. As he wrote in December, 1524, "The terrible papal edict, the more terrible imperial edict, the imprisonments, the confiscations, the recantations, the fagots and burnings, all these things I can see accomplish nothing except to make the evil more wide-spread."[84] He was always an advocate of persuasian and education, rather than of force or coercion. He repeatedly called attention to the fact that prior to St. Augustine it was not the custom to appeal to the civil power for the suppression of heresy, and that even he opposed the death penalty in dealing with the Donatists.[85] Had Erasmus, an apostle of what we today call "gradualness," prevailed rather than Luther,

history would have known neither the advantages nor the disadvantages of the Protestant Reformation. We should have escaped many extremes of intolerance on the part of both Church and State; but we might not have seen the foundation of that complete religious freedom which we know in this country today.

Erasmus, who remained in the fellowship of the Catholic Church to the end, died before the settlement of the American colonies, and had no direct influence on the religious-freedom guarantees of our Constitution. Indirectly, however, he rendered the cause much service by his attacks on intolerance; by his own tolerant attitude, which became part and parcel of the humanist tradition; and especially by giving to the world the first printed Greek New Testament. This permitted Roman Catholic theologians and reformers alike to go back for the first time to the teachings of Christ and the apostles in the original Greek in which their words were preserved without the mistakes of the Latin version, and the more serious errors of the marginal commentators. In other words, it put the Bible-reading world, which included most of the founders both of the American colonies and of the American republic, in possession of a nearly authentic text which profoundly influenced both the King James and Genevan versions. They thus learned of "the liberty of the Gospel" from the fountainhead. What Erasmus, had he been living today, would have thought of the modern separation of Church and State is hard to say. It probably would have depended on the nation of his residence. But of one thing we may be certain: he would have been the champion and exponent of religious freedom.

Of the followers of Erasmus, probably no one else in the sixteenth century made so constructive a stand for religious freedom as the scholarly Sebastian Castellio (1515–63); like him a Bible translator (into French), and a university professor of Greek. He opposed John Calvin as "the Pope of Geneva," and severely condemned his part in the burning of Michael Servetus for his anti-Trinitarian and antipaedo baptism views. It was in controversy over this event that he developed his views of toleration, starting with the ethical and rational points of view of Erasmus, and adding spiritual reasons based on the mystics. We find him using such advanced arguments against persecution as that the emphasis should be on deed rather than creed; that "to force conscience is worse than cruelly to kill a man"; that "The best sects are those which believe and obey Christ and imitate His life, whether they be called Papist, Lutheran, Zwinglian, Anabaptist or any other name"; that coercion only advertises heresy; and that by persecution and violence "one can no more build the Church than one can construct a wall with cannon blasts."[86] Such sentiments publicly expressed, and his conception of conscience as loyalty to what one thinks to be right, showed Castellio to be well ahead of his time as an opponent of persecu-

tion and an advocate of religious freedom; the only exceptions he would make being in the case of atheism and blasphemy, and even here he would limit punishment to fine, banishment, and imprisonment.

(8) THE REFORMATION UNDER LUTHER

In dealing with the Reformation we must remember that it and its influences were complicated by many divergent factors. These have resulted in the ultimate emergence of two types of Protestantism: the conservative, represented later by Lutheranism, Calvinism (but not by the Scotch-Irish because of their experience in North Ireland), and the Church of England, which resulted in State Churches; and the radical, represented especially by the Anabaptists and their varied progeny, who opposed the Church-State ideal and stood for religious freedom. In spite of these divergences, and the fact that the former groups were in early days the larger and more influential, the movement resulted ultimately in an important contribution to our religious freedom. We are here mainly concerned with its religious and politico-ecclesiastical aspects, not its purely economic ones, although even the latter had their bearing on our subject, especially in connection with tithes. We associate the Reformation principally with sixteenth-century names—Luther, Melanchthon, Calvin, Zwingli, Cranmer, Knox, Colet, Coligny, and the large-minded Erasmus, who remained in the Roman Catholic Church; but let us not forget their predecessors. I have in mind such groups as the Albigensians of the eleventh century; the Waldensians of the twelfth; the Lollards and their great leader, John Wycliffe (*c.* 1320–84), an outspoken advocate of the separation of Church and State, and of the voluntary support of the Church; and the Hussites (John Huss, *c.* 1369–1415), of whom the earnest sect of Moravian Brethren, with their primitive Christianity and their opposition to war, made an important contribution to America. They had similar reform ideas on many matters, all wishing to restore primitive, spiritual, nonecclesiastical, and nonpolitical Christianity. This essentially "Protestant" movement potentially freed the human soul from spiritual bondage by laying emphasis on freedom of conscience and the accessibility of the individual soul to God, and by restoring the Bible to the laity, thus acquainting them with the simple, democratic ideals of the early Church. It tried to release men from the excesses of external authority by substituting the doctrine of justification by faith. That historic Protestantism had serious limitations cannot be doubted. Europe lost her spiritual unity and the controlling influence of the Church in art, the trade guilds, and many of the other organized activities of men. Both the State and the bourgeoisie with its mercantile interests assumed a new influence, and the tyranny of the infallible Book—with many false deductions as to its teaching on original sin and other

matters—succeeded to the tyranny of the infallible Church. Furthermore, the Protestant churches when they became powerful often fell into the old errors of Rome in mixing politics and religion, and in favoring State churches under State supervision, with little if any tolerance for others. But the work of Luther in particular—in spite of his many extremes—in casting off Church practices that were inconsistent with the teachings of the Founder of Christianity, and proclaiming the rights of the individual conscience, was of supreme importance.

Of the two great Protestant leaders, Martin Luther (1483–1546) and John Calvin (1509–64), Calvin had the deeper influence on political organization and religious thought in the United States; but Luther also held some views which must not be overlooked in any study of religious influence in this country. Luther's theory of justification by the faith of the individual and his emphasis on *The Liberty of the Christian Man;* his stressing the importance of getting back to the fundamental evangelistic truths of the Bible regarding personal religion, and providing them in the vernacular so that they could be read by the people; his opposition to all ecclesiastical abuses of power or conduct; his advocacy of "prophetic" preaching with its insistence on high moral standards —these are some of the contributions of Luther to American religious ideals.

We owe much to him and even more to some of his associates for laying the foundations, at least in theory, of the Protestant doctrine of the "right of private judgment" so prominent in Reformation discussions. This was and is closely related to freedom of conscience. It does not imply any lack of respect for the historic creeds of Christendom, or for the duly chosen authorities of the Church, but it does assert that the individual has the privilege of using his own mind in reaching decisions in matters of belief and conduct. It emphasizes what the canon law of the Roman Catholic Church also asserts, that conscience is a faculty and expression of the sacredness of the human person, and that it cannot be forced. As the *New Catholic Dictionary* states, "the light of his own reason constitutes for every individual the ultimate subjective norm of his own conscience; and God's rewards or punishments are meted out to every one, according as he has obeyed or disobeyed the voice of his own conscience."[87] The Protestant believes that this principle holds good in the field of belief as well as conduct. This provides one of the foundations of man's freedom.

With these values went certain limitations, such as the tendency to violence in controversy; the lack of any capacity for conciliation between religious groups; the tendency to substitute for one dogmatic system another equally intolerant; and the belief in the State-Church idea, which carried with it an almost unquestioning subservience of the Christian citizen to the will of the ruler.

Luther revolted from the control of the Church by what he believed to be the

"corrupt," materialistic, arbitrary rule of the papacy of the early sixteenth century. He felt that the State, as represented by a Protestant sovereign,—when this was possible, as in Germany,—would be a much wiser source of ultimate administrative power than the papacy, and would give far more independence to the churches and larger capacity for their spiritual growth. We shall understand Protestantism in this country and Luther's contribution to it only as we remember this; for among other things, it was a revolt against a type of domination that he believed inconsistent with primitive Christianity and with the interests of the Church, which needed to have power restored to ministers and laity. The change in point of view is well expressed in Article XIX of the 39 Articles adopted by the Church of England in 1552. This reads:

The visible Church of Christ is a congregation of faithful men, in which the pure Word of God is preached, and the Sacraments be duly ministered according to Christ's ordinance, in all those things that of necessity are requisite to the same.

As the Church of *Jerusalem, Alexandria,* and *Antioch,* have erred; so also the Church of *Rome* hath erred, not only in their living and manner of Ceremonies, but also in matters of Faith.

This article was readopted by the Protestant Episcopal Church in this country in 1801 and is still printed with *The Book of Common Prayer.* The Church had previously (1792) adopted the ordinal providing for the making, ordaining, and consecrating of bishops, priests, and deacons as the three historic "Orders of Ministers." Most other Protestant churches went further in their revolt from papal domination, unfortunately discarding many historic and valuable elements in Catholic tradition.

Luther's expressed attitudes toward religious freedom are inconsistent. On the one hand, especially in his early writings, are found statements advocating full liberty of conscience: "God desires to be alone in our consciences," and "to burn heretics is against the will of the Spirit." He went so far as to say that "every law that aims at extending its power to the conscience, usurps the kingdom of God, and is wicked."[88] He courageously stood for his right as a minister of the gospel to oppose all teachings which he believed inconsistent with the Christian religion: "It is neither safe nor right to act against one's conscience." "The liberty wherewith Christ hath made us free," which St. Paul advocated in the Epistle to the Galatians,[89] was to become, as a result of his preaching and work, one of the important grounds of civil liberty. Furthermore, he did much for religious freedom when he emphasized the principle of the responsibility of each person to God, and the ability and duty of the believer to find God's will by direct communion with Him.

On the other hand, unfortunately, are many intolerant sayings and equally intolerant acts. He advised princes to punish those who taught doctrines con-

trary to the articles of the Christian faith. He supported the terrible persecution of the Anabaptists. He became extreme in denouncing those who differed from him both among Catholics and Protestants. He inconsistently evidenced in his contests with Zwingli, Calvin, and the "rabble of peasants," a type of dogmatism similar to that which he denounced in the Church of Rome, and was willing to give the ruler of a German state almost as much power over religious beliefs and practices as he denied to the pope. From about 1530 on, he made as marked a change in the direction of intolerance as St. Augustine had earlier; but he had been responsible for certain seed thoughts and emphases that under more favorable historic conditions were to slough off much that was unseemly and extreme and to bring forth fruit of permanent value.

A Protestant Church historian has recently summarized the attitude of Luther and his colleagues on the matter of toleration:

> The Protestant Reformation itself [he writes] has at times been credited with the rise of religious liberty but such a statement can be made only with distinct reserve. The remark . . . that democracy was the child not of the reformers but of the Reformation could be transferred with equal warrant to religious liberty and with equal qualification, for in both cases the outcome was only indirect and eventual. The outstanding reformers of the sixteenth century were in no sense tolerant. . . . The reformers can be ranged on the side of liberty only if the younger Luther be pitted against the older or the left wing of the Reformation against the right. Consistent liberals, to be sure, there were such as Franck, Castellio, and Acontius, but they were a small and powerless minority. The opinion of the dominant group was expressed with pithy brutality by Theodore Beza when he stigmatized religious liberty as a most diabolical dogma because it means that everyone should be left to go to hell in his own way.[90]
>
> . . . The greatest difference lay in the legal basis for persecution. For Catholics this was the canon law which was jettisoned by the Protestants. For it were substituted the Bible and the Roman law. In the long run this shift made for liberty, because the Bible provides but an insecure basis for the persecution of heresy, and the Roman law, while explicit enough, was to enjoy only a temporary vogue. The difficulty in the case of the Bible is that although the Old Testament is severe in its penalties, they are directed not against heresy but only against idolatry and apostasy, whereas the New Testament, though mentioning heresy, is mild in its treatment of the offender. The Protestant persecutors had to combine the offense of the New with the penalty of the Old Covenant, a combination which the liberals were not slow in prying apart.[91]

In general it may be said that religious liberty, as we understand the words today, did not exist in Europe in the Middle Ages. It even existed only very imperfectly in the days of the Reformation; but the seeds of liberty were in some of Luther's major teachings, although certainly not in all of his practices; and in due time they were to bring forth considerable fruit for all forms of freedom—political, social, intellectual, religious.

Daniel Webster (1782–1852) was one of our statesmen who clearly saw the ultimate contributions of the Reformation under Luther to civil and religious liberty in this country. He lived in a period and in a section of the country which did not fully recognize the contribution of the Catholic and Anglican churches to our civilization, and consequently perhaps overemphasized the relative importance of Puritanism, but there is much truth in his address on the completion of the Bunker Hill Monument (1843). Its phrases are long, complicated, and ponderous, as was characteristic of the orations of the era, but the thought is clear.

> Other powerful causes soon came into active play. The Reformation of Luther broke out, kindling up the minds of men afresh, leading to new habits of thought, and awakening in individuals energies before unknown even to themselves. . . .
>
> The spirit of commercial and foreign adventure, therefore, on the one hand, which had gained so much strength and influence since the time of the discovery of America, and, on the other, the assertion and maintenance of religious liberty, having their source indeed in the Reformation, but continued, diversified, and constantly strengthened by the subsequent divisions of sentiment and opinion among the Reformers themselves, and this love of religious liberty drawing after it, or bringing along with it, as it always does, an ardent devotion to the principle of civil liberty also, were the powerful influences under which character was formed, and men trained, for the great work of introducing English civilization, English law, and, what is more than all, Anglo-Saxon blood, into the wilderness of North America. . . .[92]

(9) THE SPECIAL INFLUENCE OF CALVINISM

The views of John Calvin (1509–64) had more direct influence on America than those of Luther, for he largely molded the thinking of the Congregationalists of New England and the Scotch Presbyterians, together with the closely related Dutch Reformed Church of the middle states, and even influenced the Anglicans[93] of the South, who represented the evangelical or Protestant element in the Church. These were in many ways the most influential large groups in the country. The Huguenots and some of the Baptists were also Calvinistic. Calvin was not personally interested in democracy, but the Republic of Geneva, in which he played such a large part, did much, especially through the middle classes whom he influenced profoundly, to make his ideas effective overseas. The leader of the Scotch Reformation, John Knox (1505–72), who so largely molded the thought of the Scotch-Irish in America, called the Geneva of Calvin "the most perfect school of Christ that ever was on earth since the days of the Apostles."[94] The doctrines embodied in representative Protestant creeds such as the Westminster Confession (1647) were Calvinistic—especially the cardinal ones of the sovereignty of God, election, the sinful depravity of man, the divine character of the Bible (both Old and New Testaments) as the Word of God,

and the doctrine of salvation through the redeeming power of Christ. These became a part of the convictions of most of those who settled the Eastern seaboard of America in the seventeenth and eighteenth centuries, and the West in the nineteenth. The modifications in Article XXIII "Of the Civil Magistrate" so as to make it fit into American conditions as adopted by the General Synod in 1788–89, after the close of the Revolution, will be considered later.[95] The division of powers between the spiritual and civil authorities, and the special duty of the latter to protect the interests of the Christian Church, were retained, but Calvin's idea of a State-Church, introduced into New England, was abandoned by providing that the State should not give the preference to any denomination of Christians above the others.

We also find, even in Puritan New England, as a result of the teachings of Samuel Hopkins (1721–1803) and others, supplemented from without by the Enlightenment and Anglican influence, a gradual modification in other views, such as those of human depravity and predestination, so as to make them more consonant with the spirit of Christianity. But it was not until the rise of Methodism,[96] with its emphasis on salvation being free to all converted persons, that American Protestantism in general departed from John Calvin's rigid views and consequently developed a more truly Christian and democratic theological basis.

The major importance of Calvin's views for our purpose is that he emphasized supremely the necessity of a Christian State and a Christian society, and believed that these could be brought about only by the combined influence, "different yet not divided," of the sacred and secular authority, both exercised by loyal Christians.

> In Calvinism this idea of the *Corpus Christianum* is regarded as the union of the Government which discerns its duties—both from the point of view of Christian and of Natural Law—in reason and in the Bible, and the active independent Church, which administers its own law of Divine justice for the Christianizing of Society, and also works with the State in the spirit of a common obedience to the Word of God. It is a uniform system of life and of Society as a whole, inspired by one common ideal in things secular and sacred. . . .[97]

Nothing shows these views more clearly than Calvin's insistence on the Biblical parallel of Saul the king and Samuel the prophet. They were in agreement because both wished to serve God. Saul must give heed to the voice of the prophet, and Samuel must not interfere with the civil laws promulgated by the king. Calvin felt that it was the duty of the magistrates to do all in their power to maintain the purity of the Church and to support its officers in their work for education, morality, and religion, but he believed that the civil power should not be allowed to dictate in any way as to spiritual and ecclesiastical matters.

Both of the great powers were equally responsible to God, and to serve Him was equally the duty of churchman and statesman, for, as the late James Anthony Froude (1818–94) pointed out in his memorable address at St. Andrew's University on "Calvinism," it was in its early days "an attempt to make the will of God as revealed in the Bible an authoritative guide for social as well as personal direction."[98] It is this which gives it permanent significance.

As head of the church in Geneva Calvin was the leading citizen of the city, and as such was extremely active in recodifying its laws, developing its sanitation, improving its educational facilities, developing its trade; indeed, we know that he was consulted on every matter of any importance which came before the council, not only on questions which had to do with the Church but questions of law, manufacture, police, and so on. He was also the founder of the college that became the University of Geneva, and which was in some respects the model for the "Christian colleges" which developed throughout the United States. Indeed, his stressing of the value of education was to bring forth rich fruit in this country, as Congregationalists and Presbyterians were generally the leaders in this field in the early period, more especially in secondary and higher education.

The influence of John Calvin and his associate, Theodore Beza (1519–1605), on the social-legislative activities of the churches in Geneva, and through them on Protestantism generally, was enormous. Through the consistory—a mixed body of laymen and ministers—harsh creditors were censured, usurers and monopolists punished, dishonest merchants and professional men reprimanded, and great zeal shown for what is now called "reform."

> From the election of Beza in place of Calvin in 1564 to his death in 1605, hardly a year passes without a new demand for legislation from the clergy, a new censure on economic unrighteousness, a new protest against one form or another of the ancient sin of avarice. At one moment, it is excessive indulgence to debtors which rouses their indignation; at another, the advance of prices and rents caused by the influx of distressed brethren from the persecutions in France; at a third, the multiplication of taverns and the excessive charges demanded by the sellers of wine. Throughout there is a prolonged warfare against the twin evils of extortionate interest and extortionate prices.[99]

These are the words of an eminent English economist, Professor Richard H. Tawney (1880–), whose work as president of the Workers' Educational Association has given him a deep interest in the problems of industrial relations, and has led him to study the cause and cure of existing social evils.

Calvin assumed that every member of the State was under the Church's discipline, hence his theory of government tended to be theocratic, a feature that became characteristic of Puritan New England; but it also had its democratic

features, for he believed firmly that the officers of the Church should be chosen by its members, who should take an active part in Church affairs; an excellent training for political self-government.[100] This is one of the reasons why the Calvinistic churches exerted such an influence both on the theory and practice of republican institutions.

Furthermore, the "compact" or covenant theory of government, which we owe largely, although in varying forms, to two very different Genevans, John Calvin and Jean Jacques Rousseau (whose *Contrat social* appeared in 1672), had a great influence on American political theory. Calvin's influence probably came down partly through Professor William Small (1775), one of Jefferson's teachers and special friends at the College of William and Mary, and certainly largely through Dr. John Witherspoon (1723–94), who deeply influenced Madison at Princeton, as well as through some of the more liberal Calvinist philosophers of New England.

We owe to a Roman Catholic source the interesting statement that Calvinism stands much nearer to Catholicism in its conception of the relation of Church and State, and in its assertion of the independence and supremacy of the spiritual power, than does Lutheranism. The author responsible for this statement, Christopher Dawson (1889), says that in this respect Calvinism "carries on the traditions of medieval Catholicism and of the Gregorian movement of reform to an even greater degree than did the Catholicism of the Counter-Reformation itself." Both religious movements looked upon Church and State as two aspects of what should be an organic unity. Father McSorley, who quotes this statement with evident approval in his *Outline History of the Church,* adds that it must not be overlooked that Calvinism "helped to break the power of political absolutism."[101]

Another field which we can only mention here is the influence of Calvinism on the American middle class in general and more especially on its economic activities and ethics, which inevitably brought the churches into contact with many features of the public work of the State. Professor Tawney in a brilliant work has brought this out clearly, showing not only the increased responsibility placed on the layman by the Church through the consistory and in other ways, but the new emphasis given to the problems of economics and business conduct, influences which were to show themselves impressively in the work of the churches in the American Republic.

If Calvinism welcomed the world of business to its fold with an eagerness unknown before, it did so in the spirit of a conqueror organizing a new province, not of a suppliant arranging a compromise with a still powerful foe. A system of morals and a code of law lay ready to its hand in the Old Testament. . . . The first half-century of the Reformed Church at Geneva saw a prolonged effort to organize an economic order

worthy of the kingdom of Christ, in which the ministers played the part of Old Testament prophets to an Israel not wholly weaned from the fleshpots of Egypt.[102]

A few quotations from Calvin's *Institutes of the Christian Religion* (1536), his most clearly reasoned and influential publication, will show points of view in Church-State relations that have been frequently emphasized by his many American disciples.

III. The opinion entertained by some persons, that . . . all civil magistrates were strangers to the profession of Christianity, is a mistake, for want of considering the great distinction, and the nature of the difference, between the ecclesiastical and civil power. For the Church has no power of the sword to punish or to coerce, no authority to compel, no prisons, fines, or other punishments, like those inflicted by the civil magistrate. Besides, the object of this power is, not that he who has transgressed may be punished against his will, but that he may profess his repentance by a voluntary submission to chastisement. The difference therefore is very great; because the Church does not assume to itself what belongs to the magistrate, nor can the magistrate execute that which is executed by the Church. . . .[103]

Nor let any one think it strange that I now refer to human polity the charge of the due maintenance of religion, which I may appear to have placed beyond the jurisdiction of men. For I do not allow men to make laws respecting religion and the worship of God now, any more than I did before: though I approve of civil government, which provides that the true religion which is contained in the law of God, be not violated, and polluted by public blasphemies, with impunity. . . .[104]

XXII. The first duty of subjects towards their magistrates is to entertain the most honourable sentiments of their function, which they know to be a jurisdiction delegated to them from God, and on that account to esteem and reverence them as God's ministers and vicegerents. . . .[105]

XXIII. Hence follows another duty, that, with minds disposed to honour and reverence magistrates, subjects approve their obedience to them, in submitting to their edicts, in paying taxes, in discharging public duties and bearing burdens which relate to the common defence, and in fulfilling all their other commands. . . .[106]

XXXII. But in the obedience which we have shewn to be due to the authority of governors, it is always necessary to make one exception, and that is entitled to our first attention, that it do not seduce us from obedience to him, to whose will the desires of all kings ought to be subject, to whose decrees all their commands ought to yield, to whose majesty all their sceptres ought to submit. . . .[107]

Calvin did not conceive of Church and State as completely independent bodies but as closely related instruments of a theocracy whose purpose was to carry out the sovereign will of God. Puritanism's "interfering spirit of righteousness" was part of Calvin's emphasis on having the will of God accomplished in this world.

Calvin gave his Church a constitution distinct from that of the State, but he felt that the State should co-operate with the Church in its Christian work. The

State was, from a Calvinist point of view, somewhat subordinate to the Church, whereas in Lutheranism the Church was somewhat subordinate to the State. In other words, Calvin's views were largely theocratic; Luther's, somewhat Erastian. As a general result, when the Calvinistic churches were unable to control the State they tended to break away and keep themselves apart as Separatists that they might not be interfered with from without. So strong was this tendency that Ruffini calls Calvinism "the great source of Separatism, from which all the Separatist movements in every country derived their origin."[108] Furthermore, the strife between rigid Calvinism and less rigid but almost equally stubbornly held Lutheranism, as well as that between Protestantism and Catholicism, was one of the main factors leading to the realization of the absolute necessity of freedom of religion. Indeed, some writers stress the factor of strife between Protestants as actually responsible for originating the modern idea of religious liberty.[109]

But Calvin was not interested in religious freedom; indeed, he was as intolerant in his way as the Roman Catholic leaders of the time were in theirs. The fact that he consented to the killing of Michael Servetus (1511–53) for his Unitarian views (although he did not like the *burning!*), and that some other eminent Protestant leaders approved of it, speaks volumes. It is clear from this and other incidents and utterances that Calvin did not in any way plan for a more tolerant world. He wanted a world in which rigid Calvinism was supreme. Yet, on the other hand, Calvinism itself—through its emphasis on personal accountability to God; on the equality and rights of men; on the responsible work of the laity; on the principle of the election, rather than appointment, of church elders; on the right of citizens to rise against a sovereign who denied them political or religious liberty; and on other points we have mentioned—did in the end contribute much to the cause both of democracy and of religious freedom. I find a fair statement of this in a place that would not be expected to err on the side of emphasizing the connection between Calvinism and freedom, namely, the *Catholic Encyclopedia*, which in its article on Calvin quotes Gibbon's statement to the effect that freedom of opinion "was the consequence rather than the design of the Reformation."[110]

In spite of their intense suffering from persecution in Roman Catholic France, the Huguenot immigrants, although holding strong Protestant convictions, were more inclined to support religious freedom than most Calvinist immigrants to this country. This may be seen by the relatively satisfactory conditions existing in their principal American centers, especially Charleston, South Carolina, and New York City, where French Walloons were prominent. They were seldom bigoted or notably intolerant, and were citizens of character who held in high regard the examples of their French leader, Admiral de Coligny (1519–72),

the earliest victim of the St. Bartholomew's Day massacre, and a man chosen to represent France on the great monument of the Reformation in Geneva.

Many American Huguenots affiliated with the Episcopal Church, others with the Presbyterian bodies; but wherever they went their leaders were generally men of culture and tolerance, though tolerance was hardly a characteristic of the otherwise admirable John Jay (1745–1829). George Washington's earliest known Virginia ancestor belonged to this group, and it was perhaps partly due to this that he was always so generously minded toward other religious bodies than his own and that he gave the Marquis de Lafayette encouragement in his plan to have the Huguenots accorded more freedom and treated with more fairness in France. We are told that when Lafayette visited Washington at Mount Vernon in 1784 they discussed "the great French injustice," and Washington persuaded him "that he would do a work worthy of the admiration of posterity if he labored for the amelioration of the situation of French Protestants."[111] They exchanged letters referring to the subject in 1785. Washington expressed his sympathy but advised his friend to work very cautiously: "it is part of the military art to reconnoiter and feel your way before you engage too deeply."[112] Two years later, when Lafayette was working for the Toleration Edict of 1787, Washington wrote to him from Philadelphia, August 15:

> I am not less ardent in my wish that you may succeed in your plan of toleration in religious matters. Being no bigot myself to any mode of worship, I am disposed to indulge the professors of Christianity in the church, that road to Heaven, which to them shall seem the most direct plainest easiest and least liable to exception.[113]

(10) THE ANABAPTISTS, BAPTISTS, MENNONITES, AND QUAKERS

The Anabaptists and other despised and persecuted Christian sects of humble people originating in Central Europe in the second quarter of the sixteenth century, by upholding their rights of religious freedom based on Biblical and Reformation teachings, were of vital importance in paving the way, through Baptists, Quakers, and others, for our American religious freedom. They flourished in Germany and adjoining lands from the time of the Peasant War (1525) on. They went to many extremes of teaching, conduct, and action, and drew the opposition of Luther, who feared that organized Christian society would disintegrate under them. As a result of persecution in other places, they became particularly strong in the Netherlands, where William of Orange gave them a peaceful refuge during his tolerant reign (1574–85). They are a good example of the contention of Professor H. Richard Niebuhr (1894–) that the most creative church-forming religious movements are "the work of the lower strata."[114] There were different groups, but they were one in teaching the supremacy of

the individual conscience even when it ran counter to the orders of the State. They refused to take oaths. They preached the absolute brotherhood of believers in Christ, and that each individual soul is responsible to God alone and can have access to Him without any intermediate agency. They influenced the religious freedom ideas of later Baptists, Mennonites, Quakers, and other unconventional groups.

It was in Amsterdam that the English Baptists, organizing their Church in 1611, adopted the well-known and influential declaration on the subject of Church and State separation: "The magistrate is not to meddle with religion or matters of conscience, nor compel men to this or that form of religion; because Christ is the King and Law-giver of the Church and conscience."[115] Three years later, in 1614, we find another statement of belief from English General Baptists in Amsterdam that is most creditable to the group. It affirms that "the magistrate is not by virtue of his office to meddle with religion, or matters of conscience, to force or compel men to this or that form of religion, or doctrine; but to leave Christian religion free, to every man's conscience and to handle only civil transgressions, injuries, and wrongs of man against man."[116]

A good statement of Baptist views as to the importance of the separation of Church and State is that made in 1614 by Leonard Busher in a petition to King James I, entitled *Religious Peace or a Plea for Liberty of Conscience.*

> Kings and magistrates are to rule temporal affairs by the swords of their temporal kingdoms, and bishops and ministers are to rule spiritual affairs by the Word and Spirit of God, the sword of Christ's spiritual kingdom, and not to intermeddle one with another's authority, office, and function. . . . It is not only unmerciful, but unnatural and abominable, yea, monstrous, for one Christian to vex and destroy another for difference and questions of religion.[117]

The *Dictionary of National Biography* refers to this, in Busher's biographical sketch, as "probably the earliest publication in which liberty of conscience is openly advocated."[118] The author, who had been an early Brownist, was a member of the first Baptist general congregation, that formed by Thomas Helwys in London.

The Baptist groups mentioned were the forerunners and forebears of those Baptists who were the most outspoken opponents of the State-Church idea in America, and who contributed powerfully to the cause of religious toleration and freedom through such prophets of a better day as Roger Williams, John Clarke, Isaac Backus, and John Leland, whose specific services to the cause will be considered later.[119]

The Mennonites, named after Menno Simons (1492–1559), a Dutch reformer,

who opposed infant baptism, were among the less aggressive and more educated early Anabaptists. They became prominent in Germany and in Switzerland, where a group was formed in 1525, sometimes called the "Swiss Brethren," but they flourished specially in Holland, which gave them protection. There they had some influence on the early American Independents. They withdrew from the State-Church. They believed in obeying civil authority, but did not consider it Christian and would not participate in government. They were advocates of nonresistance, opposed oaths, and tried to live by what they understood to be the principles of primitive Christianity. They adopted a democratic form of electing their pastors and were believers in lay preaching. These earnest and respected people became strong advocates of religious freedom and pacifism in the United States, and had many points in common with the Quakers. They even exceeded them and all other groups in the number of conscientious objectors in World War I. They made their first settlement here in 1683, in Germantown, Pennsylvania.[120]

The Friends or Quakers, founded by George Fox (1624–91), were another group in much the same tradition: emphasis on individual conviction, opposition to ceremonialism, separation of Church and State, refusal to take oaths, belief in nonresistance. They refused to pay tithes for the support of the English Established Church, were simple and democratic in their manner of life, and preached and practiced human equality and interest in the welfare of the outcast. Dr. Carlyle, a competent student of religious freedom, gives it as his opinion that the Friends also were the first religious group to recognize the propriety and possibility of religious freedom.[121] Their great work in America began with the settlement under William Penn[122] in Pennsylvania in 1682. Their attitude at that time in England on freedom of conscience and separation of Church and State is clearly shown in a statement of belief adopted in 1675:

> Since God hath assumed to himself the power and dominion of the conscience, who alone can rightly instruct and govern it, therefore it is not lawful for any whatsoever, by virtue of any authority or principality they bear in the government of this world, to force the consciences of others; and therefore all killing, banishing, fining, imprisoning, and other such things, which men are afflicted with, for the alone exercise of their conscience or difference in worship or opinion, proceedeth from the spirit of Cain, the murderer, and is contrary to the truth; provided always that no man, under the pretense of conscience, prejudice his neighbor in his life or estate, or do anything destructive to, or inconsistent with human society; in which case the law is for the transgressor, and justice, to be administered upon all, without respect of persons.[123]

This early declaration is one to which American Quakers have generally adhered both in theory and practice.

(11) THE SOCINIANS (UNITARIANS) AND THE INDEPENDENTS (CONGREGATIONALISTS)

(a) *The Socinians.* The Socinians of the sixteenth century, or Unitarians, as they came to be called, were among the strongest promoters of religious liberty. They were not committed, as were the Anabaptists, to the theory of the necessary separation of the Church from the State, being the progenitors of the European theory and practice known as Jurisdictionalism, a form of Erastianism, in which the State, although granting a large measure of freedom to religious bodies, retains authority over them. In other words, the Socinians believed that there should be entire liberty of conscience, but that it was right and proper that the State should exercise some jurisdiction over the organized activity of Protestant and Catholic alike.

Socinianism is named after Faustus Socinus, a theologian of Italian birth, who lived from 1539 to 1604. He was particularly active in Poland, where he and his followers denied the divinity of Christ and the divine inspiration of Scripture, but were even more known for their views of toleration, which Faustus had in some measure received from his uncle, Laelius Socinus (1525–62).

The Socinians were originally Italian anti-Trinitarians, largely settled around Venice, and later moving to Switzerland. They recognized the competence of the civil authority in everything which did not affect dogma, but on this subject they were perfectly clear-cut in their conviction that there should be great freedom. The so-called Catechism of Rakau, mainly the work of Faustus Socinus, and published in 1605, the year after his death, is in some ways the most remarkable manifestation of the spirit of toleration of its time, as it definitely and solemnly emphasizes the principle of religious liberty.

From Poland the movement spread to Transylvania, Germany, Holland, England, and America. Its theory was that a few easily understood portions of the New Testament were the only fundamental matters and that on all other matters there should be allowed difference of opinion. These views were expressed in their First Confession of Faith of 1574, which even at that time—thirty years before the Rakau Catechism—condemned all persecution of dissidents, taking the ground that Christianity should convert not by arms but by force of truth. These views were also maintained by all the followers of the so-called Racovian School to such an extent that Professor Ruffini, in his important survey of religious liberty, comes to the conclusion that the Socinians and the Anabaptists were the two principal forerunners of modern religious liberty, and that in the sixteenth century Socinianism alone "made toleration a fundamental principle of ecclesiastical discipline, and determined, more or less immediately, all the subsequent revolutions in favour of religious liberty."[124] His tracing of

its influence through Holland to America is specially interesting. He shows the mutually helpful contact of Arminians, who were more conservative theologically but stood for entire Church–State separation, and the Socinians, who were at least originally stronger for religious liberty, but were not opposed to such plans as developed in many of the countries of Northern Europe where the State felt that it had the right and the duty to exert considerable control in Church matters outside the field of dogma. In these respects the Dutch Remonstrants and the Socinians had much in common, while the Counter-Remonstrants held that Church and State were equal and co-ordinate.[125]

(b) *The Independents.* It was in England and Holland in the closing decades of the sixteenth century, and the early decades of the seventeenth, that the church polity developed which had the most influence on democracy in the United States. That is what we call Congregationalism, where each church organization or local church has practically unrestricted control of its own affairs. Christ is the only recognized head of the Church, there being no intermediaries between Him and the worshippers, and no dependence of the organization on the State. This, however, did not of itself alone result in religious freedom. The new group was so sure that it was right, and that it represented primitive Christianity, that it was often intolerant of others; but its contribution to civil liberty, education, and democratic polity in the United States has been enormous.

Persons holding these views were unable to subscribe to the Act of Uniformity in England in 1559, and were consequently unable to remain members of the Established Church. The leader of these Separatists was Robert Browne (1550–*c.* 1633). They were called Brownists after him, and came to be known under the Protectorate as Independents, as distinct from other and more conservative Puritans who were Presbyterians. By 1658 some 120 of their churches were represented at the conference which drew up the Savoy Declaration, one of the foundation statements of Congregationalism.

The theory of Brownism rests not only on the entire independence of each congregation, but on the sovereign power of the faithful who compose it. The latter, as Borgeaud has pointed out, was an important step in the development of democracy.[126] Robert Browne was a pure democrat in his theories, and his influence was great.

From the standpoint of America the most significant of the group of Separatists were the Pilgrims who came over on the *Mayflower* and founded Plymouth Colony in Massachusetts in 1620. Their nucleus was a group of Independents at Scrooby, near York, in England, who had migrated to Holland. Here John Robinson (*c.* 1576–1625) became their ordained leader. They went

to Holland partly for a larger measure of freedom, and to escape the condemnation of the Established Church. By 1608 most of them had reached Amsterdam and proceeded on to Leyden, where they remained until they sailed for America. They enjoyed and profited, as had Browne before them, by the religious freedom which William the Silent (1533–84) had brought to the Netherlands. They opposed the jurisdiction of bishops and the discipline of the Church of England. They were mostly humble folk, farmers and artisans, although their leader, William Brewster (1567–1644), had been a student at Cambridge.

They made no such contribution to religious freedom in the England of the seventeenth century as did the Baptists. They were too much influenced by Calvinistic ideas of election and by their opposition to churches emphasizing the historic episcopate; but their views of the independence of the Church from State control and of the rights of the individual conscience led inevitably to the acceptance of the principle of toleration and later that of religious freedom. This some of their more farsighted leaders believed in in the seventeenth century, and of it they have been as a denomination outspoken advocates for over a hundred years.

Perhaps the most authoritative statement of their position in early days was the Savoy Declaration of 1658, agreed on by the representatives of 120 Congregational churches in England. It shows the influence of Holland's liberality, but does not go so far as contemporary Baptist utterances. It is significant because the convention which drafted it contained a majority of nonministerial delegates.

> Although the magistrate is bound to encourage, promote, and protect the professors and profession of the gospel, and to manage and order civil administrations in a due subserviency to the interest of Christ in the world, and to that end to take care that men of corrupt minds and conversations do not licentiously publish and divulge blasphemy and errors, in their own nature subverting the faith and inevitably destroying the souls of them that receive them; yet in such differences about the doctrines of the gospel, or ways of the worship of God, as may befall men exercising a good conscience, manifesting it in their conversation, and holding the foundation, not disturbing others in their ways of worship that differ from them, there is no warrant for the magistrate under the gospel to abridge them of their liberty.[127]

A German historian of the old school has well summed up the position of the Congregationalists in regard to the separation of Church and State and religious toleration.

> The ideal of the early Congregationalists was expressed in the following terms: freedom to form independent churches; the abolition of State compulsion in religious

matters; and the exclusion of all heretical forms of religion from the State. The Congregationalist Puritans of New England perpetuated these principles; they compelled no one to join the Church; but they declined to tolerate the existence of any other church, and they gave important civic rights to the members of the Church. Here, then, we see the purely negative theory at work, which forbids compulsion in religious matters, while at the same time no room is left at all for the positive existence of different religious communions alongside of one another. It was not until the eighteenth century that positive toleration was introduced, and then that was mainly due to a slackening of religious interest and to the growth of various secular trade interests. . . .[128]

The main differences which developed between the two groups of Congregationalists, the Pilgrims and the Puritans, will be developed in a later section, III, 2 (1).

(12) THE DUTCH REPUBLIC

Holland gained her freedom in the two generations between 1523 and 1581. Due largely to the influences started by William the Silent (1533–84), the real founder of the Dutch Republic, there developed a type of toleration that was far ahead of that of any other European country at the time,[129] and was destined to have a profound influence on the United States. He came of a Lutheran family, but Charles V refused to allow him to succeed to the title of Prince of Orange unless he became a Catholic. It was not until 1573 that he finally renounced Roman Catholicism, but it should be remembered that even before he became a Protestant, he had taken a liberal view on the subject of religious freedom. "I am a Catholic," he said, "and will not deviate from religion, but I cannot approve the custom of Kings to confine men's creeds and religion within arbitrary limits."[130]

Furthermore, after he had broken with the Church because of the intolerance of the Spanish oppressors of the Netherlands, he instructed his lieutenants in 1572 "to restore fugitives and the banished for conscience's sake, and to see that the Word of God is preached, without, however, suffering any hindrance to the Roman Catholic Church in the exercise of its religion."[131] These instructions did not, however, prevent some intolerance toward Catholics, due largely to the memories of Protestant oppression under earlier Catholic rulers, in the days of Spanish supremacy.

Soon after this (1582) Robert Browne, leader of the English Separatists, took refuge in Holland. So it was here that Brownism, later transformed into Congregationalism, had its early development and published its first Confession. This group believed not only in the autonomy of each congregation, but in absolute independence from the State.[132]

Later Dutch tolerance became especially marked in and near Amsterdam, which, after the fall of Antwerp in 1585, became the first trading city of the world; and trade, especially with foreign countries, generally encourages a relatively liberal attitude in matters of religion. Spinoza (1632–77), who lived there until about 1663 and was himself a strong advocate of toleration, cites Amsterdam as at the head of the world as far as this characteristic is concerned.[133] John Locke (1632–1704), who so profoundly influenced the fathers of our republic, took refuge in Holland,[134] and his first letter on toleration was written in 1675, when he was living in hiding in Amsterdam so as to avoid being handed over to the English government. It was published in 1689, the same year a Dutch prince, William III of Orange, gave to the Dissenters of England their "first stable edict of toleration."[135] Holland also welcomed French Huguenot refugees. Some of these, such as Pierre Bayle (1647–1706), became strong supporters of toleration, although many, for historic reasons, remained as intensely opposed to the Roman Catholics as the latter were to them. Bayle's well-known work advocating toleration and condemning force in matters of religion appeared in 1686.

John Lothrop Motley (1814–77) published his *Rise of the Dutch Republic* in 1856, and followed it with other books which showed the liberal tendencies of the Netherlands, but it remained for less distinguished authors, such as Douglas Campbell (1839–93) in his work entitled *The Puritan in Holland, England, and America,* published in 1892, to show in popular form the extent of the influence of Holland on those ideals of religious toleration which developed into our religious freedom. The author may have been inaccurate in some details, but the essential points he brings out are cumulative and convincing.[136]

Dutch influence in this respect in America was shown partly in the relatively liberal attitude of the colony of New Netherlands toward religious dissenters during most of its history, which bore fruit in the provisions for religious freedom secured in the highly significant Constitutional Convention of 1777; partly in the precedent of 1579 by which the provinces were virtually left free to regulate their church affairs; partly in the attitude of the Quakers, who derived their views largely from Dutch Mennonites; partly in William Penn's personal attitude, which was molded to some extent by that of his Dutch mother; and partly through the various refugees in Holland who developed philosophical views on toleration, which became favorably known to James Madison and other fathers of the republic,[137] and to those English Separatists, such as Robert Browne, John Robinson, Thomas Hooker, who laid the foundations of the more liberal tradition in American Congregationalism.[138]

James Madison, in his letter to William Livingston, July 10, 1822, summarizes this Dutch influence. He said:

It was the belief of all sects at one time that the establishment of Religion by law was right and necessary; that the true religion ought to be established in exclusion of every other; and that the only question to be decided was, which was the true religion. The example of Holland proved that a toleration of sects dissenting from the established sect was safe, and even useful. . . .[139]

It must be remembered that the great Prince of Orange not only tolerated the various Protestant religious sects which took refuge there, including some rather extreme Anabaptists, but also the Jews and the Roman Catholics.

(13) THE PURITAN COMMONWEALTH AND ITS PROTECTOR, OLIVER CROMWELL

It is impossible to understand the various republican ideas which developed in the United States in the hundred years prior to the founding of our government, or to appreciate the development of vital religion, of religious toleration, and of the deep interest of the Church in the affairs of State, without knowing something of the life, work, and principles of Oliver Cromwell (1595–1658). He was always profoundly interested in the cause of religion, and although neither a philosopher, a theologian, nor much of a theorist, was determined that evangelical religion should play a larger part in the life and government of England. He depended upon men whom he considered religious to be his counsellors and wanted them as his soldiers. His intense devotion to the ideas of the Protestant Reformation was not the only side of the picture. He was indeed a strong Protestant, opposing what he believed to be the prelatical tendencies of the Church of England. He consequently became an early leader of the Root and Branch party, which was determined to uproot Episcopal government in all its forms, and was the spokesman for various dissenting sects developing in England.

He was a reformer but a conservative one, who did not wish to have the monarchy or the House of Lords suddenly abolished, but wanted to eliminate abuses and to introduce republican principles into the government. In carrying out his reforms he was guilty of some cruel acts, notably the execution of Charles I in 1649, supported, however, by him and by some historians as the only method available to prevent the extension of despotism in England on the one hand, and to avoid anarchy on the other. He treated the Roman Catholic priests in Ireland roughly, at times even authorizing executions; his "Major Generals" were allowed to use arbitrary and unjust methods, and there were other serious blemishes on his public record; but it is the judgment of many impartial historians that he was more moderate than most reformers and much more tolerant than most European statesmen of his time. For instance, he left the Scotch Church ecclesiastically intact when he conquered Scotland in 1653–54, although

it was deprived of powers to interfere in the civil administration. He never tried to force people to attend public worship or to join any denomination; and even when he prevented by law the public worship of Anglicans and Roman Catholics he did not interfere with their holding of their own views or with their private worship. His fine defense of the persecuted Piedmontese Christians in Vaudois received the enthusiastic endorsement of John Morley (1838–1923), who, although a great modern liberal and an agnostic, has made the founder of the Puritan Commonwealth one of his heroes.[140]

Although Cromwell was a Protestant to the bone and antagonistic to Roman Catholicism, the French envoy in England wrote that in spite of the severe laws against them the Catholics received better treatment under the Protectorate than under any other government.[141] He also was very tolerant to such persecuted groups as the Jews and Quakers, and even permitted the former to return to England, to celebrate their private worship, and to have a cemetery of their own. Indeed, the large immigration of Jews across the Channel dated from the first concessions made by the Protector. Similarly, he defended the Quakers from persecution and ordered the liberation of George Fox from prison, issuing in 1657 an order directing that his followers should be treated with leniency. Although he believed that attacks against Christianity were dangerous to the State and were outside the ordinary bounds of toleration, yet he mitigated the severity of legal penalties. A competent biographer states: "In general the toleration enjoyed under Cromwell was probably far larger than at any period since religion became the contending ground of political parties, and certainly greater than under his immediate successors."[142]

Two or three quotations showing his views on toleration may be given. In 1644 Cromwell gave one of his officers a strong rebuke for dismissal of an officer merely because his religious views appeared unorthodox:

> Surely you are not well advised thus to turn off one so faithful in the cause, and so able to serve you as this man is. Give me leave to tell you, I cannot be of your judgment; cannot understand it, if a man notorious for wickedness, for oaths, for drinking, hath as great a share in your affection as one who fears an oath, who fears to sin. Aye, but the man is an Anabaptist. Are you sure of that? Admit that he be, shall that render him incapable to serve the public? *Sir, the State in choosing men to serve it takes no notice of their opinions; if they be willing faithfully to serve it, that satisfies.* I advised you formerly to bear with men of different minds from yourself; if you had done it when I advised you to do it, I think you would not have had so many stumbling-blocks in your way. *Take heed of being sharp, or too easily sharpened by others, against those to whom you can object little but that they square not with you in every opinion concerning matters of religion.*[143]

Considering the age and the fact that Anabaptists then were looked upon much as Marxian Communists are today, the words are memorable.

Similarly, Cromwell tells the Speaker regarding the fall of Bristol in 1645:

Faith and prayer obtained this city for you. It is meet that God have all the praise. Presbyterians, Independents, and all here have the same spirit of faith and prayer, the same presence and answer; they agree here, have no names of difference; pity it is it should be otherwise anywhere.

Toleration, says John Morley in quoting the incident, is the only key word.

All that believe have the real unity, which is most glorious because inward and spiritual. As for unity in forms, commonly called uniformity, every Christian will study that. But in things of the mind we look for no compulsion but that of light and reason.[144]

These words are in keeping with Cromwell's advocacy of "liberty of conscience."

In 1648 when the Independents disapproved of his mild treatment of the Presbyterians in Scotland he said that he desired

union and right understanding between the godly people, Scots, English, Jews, Gentiles, Presbyterians, Anabaptists and all; . . . a more glorious work in our eyes than if we had gotten the sacking and plunder of Edinburgh . . . and made a conquest from the Tweed to the Orcades [Orkney Islands].[145]

When Cromwell was besieging Ross, a town in Southern Ireland, the town offered to surrender on certain conditions, one of which was that those who remained might be permitted liberty of conscience. He answered October 19, 1649:

For that which you mention concerning liberty of conscience, I meddle not with any man's conscience. But if by liberty of conscience you mean a liberty to exercise the mass, I judge it best to use plain dealing, and to let you know, where the Parliament of England have power, that will not be allowed of. . . .[146]

That was a common view among Protestants at the time. They were opposed to persecution or interfering with a man's individual belief. But they could not recognize forms and ceremonies whose practice they thought inimical to civic liberty and security.

In a speech in 1653 he pleads more effectively for the spirit of tolerance:

We should be pitiful . . . that we may have a respect unto all, and be pitiful and tender toward all though of different judgments. . . . Love all, tender all, cherish and countenance all, in all things that are good. And if the poorest Christian, the most mistaken Christian, shall desire to live peaceably and quietly under you—I say, if any shall desire but to lead a life of godliness and honesty, let him be protected.[147]

He would not permit certain forms of public worship that he believed antagonistic to the interests of the State, but with a few tragic exceptions he abstained in a persecuting age from persecution. "I had rather," he said, "that Mohammedanism were permitted amongst us than that one of God's children should be persecuted."[148]

There was one respect in which Cromwell had a great influence on the Protestant churches of America: namely, by active interest in behalf of social reform, and especially by a Puritanical attitude toward all forms of what he believed to be social ills. Regulations against dueling, against swearing, against Sunday desecration, were frequent under the Commonwealth.

It should always be said to Cromwell's credit that, in these and similar matters, he generally opposed the reactionary and immoral tendencies of his time; anticipated many political reforms; and in spite of some harsh laws and cruel acts, encouraged on the whole a spirit of justice, self-sacrifice, and toleration far ahead of that of the Stuart kings. Furthermore, he not only declined the offer of the crown, but when in supreme power, in 1683, he accepted as Lord Protector of the Commonwealth the written Instrument of Government, "the earliest example of a 'fixed government' based on fundamentals or constitutional guarantees, and the only example of it in English history."[149] This had its influence on our Constitution makers, many of whom had been favorably impressed by Cromwell because he had allowed the Puritan colonies of New England a large amount of self-government.

As to his church policy, he favored the maintenance of a national Church, but private liberty of conscience for all and toleration of the public worship of other Protestant groups, without allowing the "church to control the state." He was the leader in a movement which, although essentially English in character, has won high praise from the leading Italian authority on religious liberty. Ruffini writes that

> . . . The great English Revolution was the occasion when, for the first time in the Protestant world, the principle of separation as between the State and the Church appeared not as the simple project of some solitary thinker, nor as an article in the confession of faith of some religious minority, but as the politico-ecclesiastical programme of a great party, indeed, of the party which emerged victorious from the revolution. . . .[150]

The liberal German theologian, Johann Döllinger (1799–1890), leader of the Old Catholic movement, held similar views. He said of Cromwell that "He was first among the mighty men of the world to set up one special religious principle—the principle of liberty of conscience and the repudiation of religious coercion."[151]

We are concerned in these volumes primarily with religious liberty, but religious and civil liberty are generally so closely related that we must pause for a moment to give some attention to certain important developments under the Commonwealth, and especially to the Putney debates in Cromwell's army. These took place in 1647. The major point at issue was whether governmental representatives were to be chosen by all the people as a natural right of freeborn Englishmen, or was the suffrage to be restricted to taxpayers and the more educated and wealthy classes generally? The latter position was that taken by Cromwell and his son-in-law, Henry Ireton (1611–51). The more democratic position was that of the Levellers, a political-religious sect of a radical character drawn mainly from the Independents. They were believers in equality, basing their belief especially on Isaiah 40.4, "Every valley shall be exalted, and every mountain and hill shall be made low." They were strong opponents of the monarchy. Their leader was John Lilburne (1614?–57), who wrote *The Foundations of Freedom, or an Agreement of the People* (1648–49). He wished a republic with a single house which would be supreme, and advocated religious toleration for all sects. He and his followers were opposed to any political system based on class, had communistic leanings, and supported their economic and political views by a definitely religious appeal. No group of their time made a stronger defense of the rights of free men. Among Lilburne's major supporters in the debate were Richard Overton (fl. 1642–63) and Col. Thomas Rainsborough (d. 1648). The following are interesting statements from their proposals:

That the people do of course choose themselves a Parliament once in two years. . . .

That the power of this, and all future Representatives of this nation is inferior only to theirs who choose them, and doth extend, without the consent or concurrence of any other person or persons, to the enacting, altering, and repealing of laws; to the erecting and abolishing of offices and courts; to the appointing, removing, and calling to account magistrates and officers of all degrees; to the making war and peace; to the treating with foreign states; and generally to whatsoever is not expressly or impliedly reserved by the represented to themselves.

Which are as followeth:

1. That matters of religion, and the ways of God's worship, are not at all entrusted by us to any human power, because therein we cannot remit or exceed a tittle of what our consciences dictate to be the mind of God, without wilful sin; nevertheless the public way of instructing the nation (so it be not compulsive) is referred to their discretion.

2. That the matter of impressing and constraining any of us to serve in the wars is against our freedom, and therefor we do not allow it in our representatives; the rather because money (the sinews of war) being always at their disposal, they can never want numbers of men apt enough to engage in any just cause.[152]

The first of these conditions—namely, the withholding from government of "matters of religion," and insisting that religious instruction should be "not compulsive"—are specially to be noted.

Ireton took the ground that those that

choose the representers for the making of laws by which this state and kingdom are to be governed, are the persons who, taken together, do comprehend the local interest of this kingdom; that is, the persons in whom all land lies, and those in corporations in whom all trading lies. This is the most fundamental constitution of this kingdom and [that] which if you do not allow, you allow none at all. . . .[153]

But Rainsborough, in reply, said:

Truly, sir, I am of the same opinion I was, and am resolved to keep it till I know reason why I should not. . . . I do hear nothing at all that can convince me, why any man that is born in England ought not to have his voice in election of burgesses. . . . I do not find anything in the Law of God, that a lord shall choose twenty burgesses, and a gentleman but two, or a poor man shall choose none: I find no such thing in the Law of Nature, nor in the Law of Nations. But I do find that all Englishmen must be subject to English laws, and I do verily believe that there is no man but will say that the foundation of all law lies in the people, and if [it lie] in the people, I am to seek for this exemption.[154]

The debate in the army was followed in the nation at large. It resulted in some 20,000 tracts being published, which did much to develop the democratic tradition in England and to associate it with the cause of liberal religion. The most radical groups of Levellers were known as "Diggers," so named because they wanted the land. They believed that the earth was the Lord's and that it could not be the permanent possession of any person. Their leader, Gerrard Winstanley (fl. 1648–52), wrote:

To this very day poor people are forced to work for four pence a day and corn is dear. And the tithing priests stop their mouths and tell them that inward satisfaction of the mind was meant by the declaration that "the poor shall inherit the earth." I tell you the scripture is to be really and materially fulfilled. . . . You jeer at the name Leveller . . . I tell you Jesus Christ is the head Leveller.[155]

This is the first example in modern times of a serious proposal for constitutional government restricting the authority of the legislature in certain matters such as that of religion.[156] Unfortunately, when presented to the House of Commons it was declared to be seditious and destructive of Parliament's authority, and consequently it was not adopted. But its influence on public thinking was nonetheless great, and some of its features were later adopted in much more conservative form in the so-called Instrument of Government of 1653.

In the Cromwellian period the name of John Milton (1608–74) stands out as

that of perhaps the greatest exponent of the liberties which we have come to associate with our Bill of Rights. Not that he was prepared to go as far as we are today in permitting freedom of speech, but that he saw clearly the evils of persecution and the sheer foolishness of the usual methods of suppressing freedom. We have space to mention only a few examples expressive of his attitude. In 1644 appeared his *Areopagitica, . . . for the Liberty of unlicensed Printing,* boldly printed without license. Some of its contents have become classic. Such are his account of visiting Galileo "grown old, a prisoner of the Inquisition," his saying "as good almost kill a man as kill a good book," and perhaps the finest sentence in this strong appeal for its time for freedom of the press: "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties." And yet he had reserves as far as "mischievous and libelous books are concerned," and could not agree to the toleration of "Popery," "which as it extirpates all religious and civil supremacies, so itself should be extirpate; provided first that all charitable and compassionate means be used to win the weak and misled."[157]

The reference to Roman Catholics, though modified by the last clause, seems harsh to our ears, and we regret it, but we must remember that in the middle of the seventeenth century the Inquisition was still powerful, and the means employed by the Church to extirpate heresy continued to be cruel and out of keeping with the teachings of Christ. The massacre of the Waldensians in Piedmont took place in 1655, when Milton was Latin Secretary to the Secretary of State, and he wrote several important dispatches on the subject to the Duke of Savoy and others. It was the indignation caused by this incident which caused him to write his sonnet "On the Late Massacre in Piedmont," which opens with the lines:

> Avenge, O Lord, thy slaughter'd saints, whose bones
> Lie scattered on the Alpine mountains cold;
> Ev'n them who kept thy truth so pure of old,
> When all our fathers worship'd stocks and stones. . . .[158]

His appeals for religious toleration are impressive, such as his sonnet "To the Lord General Cromwell," in 1652, with its closing words:

> . . . Peace hath her victories
> No less renown'd than War: new foes arise
> Threatening to bind our souls with secular chains.
> Help us to save free conscience from the paw
> Of hireling wolves, whose gospel is their maw.[159]

A Second Defense of the English People, written in 1654, was an address to

Cromwell to defend religious liberty. He advocated taking away all public power from the Church, stating that "you should not suffer the two powers, the ecclesiastical and the civil, which are so totally distinct, to commit whoredom together. . . ."[160]

This same thought is brought out in many other passages; notably in his sonnet, written about the same time, "To Sir Henry Vane, the Younger," the strong advocate of toleration, whose support of Anne Hutchinson when he was Governor of Massachusetts (1636–37) had split the colony.

> . . . Besides to know
> Both spiritual power and civil, what each means,
> What severs each, thou hast learn'd, which few have done:
> The bounds of either sword to thee we owe:
> Therefore on thy firm hand Religion leans
> In peace, and reckons thee her eldest son.[161]

In 1673, the year before his death, appeared Milton's essay entitled *Of true religion, heresy, schism, toleration,* but it is not as clearly thought out as most of his other publications. He shows a willingness to extend toleration to all sects who make the Scriptures their sole rule of faith. He includes Unitarians, but excludes Roman Catholics, not on the ground of lack of civic patriotism, but because of their alleged idolatry.[162]

As we think of Milton's life work we realize that he was an Independent, intolerant of all forms of prelacy, both Roman and Anglican, and of authoritarian government in Church and State. He felt that their union, begun by Constantine, had been harmful both to Christianity and to civilization. He wanted a "Free Commonwealth" and churches that were "independent of the State," believing that "sects" and "schisms" were a healthy sign in England. He advocated disestablishment and disendowment, churches as voluntary organizations rendering their vital service under the lead of ministers modestly supported by their own members. It was on this point that he differed most markedly from Oliver Cromwell, who had come to believe in a broad union of all evangelical Christians in a State-supported and controlled national Church.

Such are some of the contributions of Cromwell, the members of his army, John Milton, and the Commonwealth, to the cause of religious freedom.

(14) THE SWISS CONFEDERATION

In the eighteenth century the Swiss migration to the United States was small, due largely to the fact that Switzerland possessed already a relatively large amount of economic and political opportunity; and it was the lack of these, as

well as religious persecution, that generally attracted settlers to the New World. The religious friction which existed seems to have been almost as much between the various Protestant groups—Reformed, Lutheran, Zwinglian, and Anabaptist—as between these and the Catholics.

New Bern, once the provincial capital of North Carolina, was settled by the Swiss in 1710, under Baron Christoph von Graffenried (1661–1743). In South Carolina and Pennsylvania a considerable migration started in 1732, made up largely of Mennonites persecuted by the more conservative Protestant groups who had followed the leadership of Ulrich Zwingli and were dominant in Zurich and Berne. This emigration from these cities became so large that from 1734 to 1744 the city authorities passed many decrees against it.[163]

There were a few men of outstanding position among the Swiss settlers, such as William Wirt (1772–1834), attorney general under Monroe and John Quincy Adams, born in this country of a Swiss father and German mother, and Albert Gallatin (1761–1849), who reached here in 1780. From men of this caliber, and more particularly from studies of European history, some of the Founding Fathers learned something of the political and religious history of the Swiss cantons. They knew of the defensive league established by the three self-governing districts or cantons, of Uri, Schwyz, and Lower Unterwalden in 1291; of the bitter religious struggle during the Reformation and the post-Reformation era; and that in 1648, when the Swiss League or Confederation became independent of the Holy Roman Empire by the Peace of Westphalia, it included thirteen confederated cantons fairly evenly divided between Protestant and Roman Catholic control. This was impressively brought out in the address to the inhabitants of Quebec adopted October 26, 1774, by the Continental Congress, which expressed the hope that Roman Catholic Canada would join the dominantly Protestant colonies to the south in a common war for independence from Great Britain.[164]

> We are too well acquainted with the liberality of sentiment distinguishing your Nation, to imagine that difference of Religion will prejudice you against a hearty amity with us. You know that the transcendent nature of freedom elevates those who unite in her cause, above all such low-minded infirmities. The *Swiss* Cantons furnish a memorable proof of this truth. Their Union is composed of Roman Catholick and Protestant States, living in the utmost concord and peace with one another, and thereby enabled, ever since they bravely vindicated their freedom, to defy and defeat every tyrant that has invaded them.[165]

This gives an unduly favorable impression; but from the signing of the second Peace of Kappel in 1531, the principle of religious "parity" was adopted, and the cantons were increasingly recognized, according to the wishes of the

dominant majority, as either Catholic or Protestant, while in the religiously mixed districts, and in certain German territories, not only could individual parishes decide their own confessional allegiance but "the free exercise of the religion of the minority was protected."[166]

As a result of the Reformation the original cantons—the forest cantons in the mountains, which in 1291 had entered a pact to safeguard their self-government, thus laying the foundations of the Swiss Confederation—remained steadfast in the Catholic faith, while the new cantons, including the great towns of Berne, Zurich, and Basel, became Protestant. The tendency was to allow each canton to decide its own religion and to exclude other religions; although by the Peace of 1712, the Protestant towns of Zurich and Berne, having made considerable territorial acquisitions in the Catholic cantons, agreed to place their new Catholic subjects on the same footing as the Protestants. Ruffini states that we have here "the first signs of a transformation of that purely *inter-cantonal* religious parity into a *cantonal* parity . . . that is to say, to an equal treatment of Catholics and Evangelicals within one and the same canton."[167] But in spite of this arrangement cantonal control of religious policy long continued in Switzerland, and true religious liberty for the individual was not fully won until the nineteenth century.

George Mason (1725–92), in a speech which he prepared for delivery in the Constitutional Convention, refers to the fine loyalty and patriotism of the citizens of some small democratic states, where the family feeling was strong. "It is this," he said, "which preserves the freedom and independence of the Swiss Cantons in the midst of the most powerful nations."[168]

The most important thing which Swiss history with its many vicissitudes taught our republic was the possibility of federating states with widely differing linguistic, religious, economic, and social backgrounds, and with religious adherence left mainly to the cantons to decide for themselves without federal interference. In other words, the absence of an established State Church for the central government was a highly important precedent. An equally important influence in American ideas of government and of the relation of the churches to public questions was that derived through Switzerland from John Calvin (1509–64), which has already been dealt with at some length.[169]

(15) THE ENGLISH CONSTITUTION

Various provisions of the English Constitution—some embodied in statutes, others in unwritten laws and customs—had direct influence on the development of the ideas of liberty in the American frame of government. The same is true of the common law,[170] although in this connection it must be remembered that

all references to the king and to the Established Church were omitted as not relevant.

The framers of our Constitution were men trained in the Anglo-Saxon tradition, and with it went Anglo-Saxon ideas of liberty. It was not unnatural that, beginning a new nation in a new land and having determined definitely upon a system of democratic government, they should eliminate Church-State legal connections and develop the ideas of liberty inherent in the great charters which brought constitutional government to England. The most important of these for our purposes were three:

(a) *Magna Charta,* the fundamental basis of responsible government and freedom of the English-speaking people. By this King John's despotic power was put to an end when he capitulated to the barons—ably supported by Stephen Langton, Archbishop of Canterbury—at Runnymede, June 15, 1215. It states that it was granted on the advice of the Archbishop of Canterbury and of various other prelates and barons. It provided in substance that the ruling sovereign, like all other English citizens, must be subject to the law, both its letter and its spirit. It also contained the historic introductory phrase, recently inscribed on the stone pulpit of Washington Cathedral: "That the Church of England shall be free, and enjoy her whole rights and privileges inviolate." The last article (Chapter LXIII) repeats the guarantees of freedom to the English Church and of their rights and liberties to all.[171] These guarantees to the Church were in this form something new in English constitutional history. In this connection it must be remembered that although the papal legate, the archbishop, and other prelates had helped to secure the charter, the pope (Innocent III) issued a bull, August 24, 1215, declaring it null and void, and followed this by excommunicating the barons who had secured it, his stated reason being that it had been extorted from the king by force.[172]

The provisions of the charter were frequently overlooked in the following centuries; but in the seventeenth century the Puritans, battling with the Stuart kings, brought it again into prominence as a defense of liberty against arbitrary government. They began to "interpret it as an impregnable bulwark of democracy."[173] They carried it over to the American colonies and used it effectively in defense of their rights.

(b) *The Bill of Rights,* 1689. This bill—"An Act declaring the Rights and Liberties of the Subject, . . ." etc.—effectively established certain liberties and forbade the king to violate them. "The Declaration of Right" on which it was based, drafted by the Commons, was presented to the Prince and Princess of Orange (afterward William and Mary), February 13, 1689, and the act, generally referred to as the "Bill of Rights," was enacted in December of the same year.

It protects "the rights and liberties" of subjects, and of their Parliament. Its specific references to the Church are few, declaring "illegal and pernicious" recent royal commissions for erecting courts of commissioners "for ecclesiastical causes," and granting "Protestants" "arms for their defense suitable to their conditions and as allowed by law."[174] But the general tenor of the rights secured was such as to prevent any arbitrary government which could interfere with the rights of subjects in such matters as jury trial, petitioning the king, free elections to a free and controlling Parliament, excessive fines, and cruel and unusual punishments. These provisions were all to mean much to citizens in general and to nonconformists, both civil and religious, in particular. The bill is in some respects even more important from the standpoint of our history than the Magna Charta, in that instead of being a transfer of certain authority from the king to the nobles, it takes first steps toward recognizing that government belongs to the people. It was therefore not unnatural that Jefferson borrowed much from it in connection with the Declaration of Independence.

This was one of the main foundations of those "rights of Englishmen" which the colonists claimed for themselves, and was highly influential in the framing of the Virginia Bill of Rights and other American documents of freedom. These rights were based on this and other charters of freedom; on the common law; on the principles of natural law and the social compact; on the supremacy of Parliament, with the Commons becoming the predominant power; and on the established customs of government. It was because they felt that these rights —embodied in an unwritten constitution but based on certain definite charters and acts accepted by the crown—were being denied them, that the colonists revolted. They set up their own government so as to secure unimpaired their inherited rights and liberties, and to add others so as to provide even greater civil and religious freedom.

(c) *The Acts of Toleration.* The Act of Toleration of 1689 was one of the most fortunate results of the revolution which put William and Mary on the throne. Some liberals proposed a plan of church "comprehension"—so modifying the liturgy by the common denominator method that Anglicans and Dissenters could both accept it. But this was rejected as impracticable, owing to wide differences of belief, and "toleration" was substituted. This was the plan which had been advocated by Cromwell and Milton, involving the right of separate assemblies for worship outside the church. Its adoption represented a decision of momentous consequence, for from now on "no Protestant in England performed any act of worship except by his own free and deliberate choice."[175]

Samuel Adams (1722–1803), discussing "The Rights of the Colonists as Chris-

tians," had this to say about this Act and its connection with Christian teaching:

These may be best understood by reading and carefully studying the institutes of the great Law Giver and Head of the Christian Church, which are to be found clearly written and promulgated in the New Testament.

By the act of the British Parliament, commonly called the Toleration Act, every subject in England, except Papists, &c., was restored to, and re-established in, his natural right to worship God according to the dictates of his own conscience. And, by the charter of this Province, it is granted, ordained, and established (that is, declared as an original right) that there shall be liberty of conscience allowed in the worship of God to all Christians, except Papists, inhabiting, or which shall inhabit or be resident within, such Province or Territory. Magna Charta itself is in substance but a constrained declaration or proclamation and promulgation in the name of King, Lords, and Commons, of the sense the latter had of their original, inherent, indefeasible natural rights as also those of free citizens equally perdurable with the other. That great author, that great jurist, and even that court writer, Mr. Justice Blackstone, holds that this recognition was justly obtained of King John, sword in hand. And peradventure it must be one day, sword in hand, again rescued and preserved from total destruction and oblivion.[176]

This Act was followed a few years later (1693) by the "Act for settling the quiet and peace of the Church," which provided for the admission of the Presbyterian ministers to a regular status in Scotland on their taking the oaths of allegiance and assurance, subscribing to the Westminster Confession of Faith, and acknowledging Presbyterian government.[177]

The Test Act repeals of the nineteenth century, especially that against Roman Catholics brought about by the Roman Catholic Relief Act of 1829 and the opening of Parliament to the Jews in 1858–60, carried this toleration further. But these are beyond the period we are now discussing, though they all go back for their original stimulus to the beginnings of official toleration in 1689. That year, with its Bill of Rights and its Act of Toleration, was a momentous one for the cause of civil and religious freedom in England, and paved the way for an even broader policy in the United States a century later.[178]

(d) *Various Other Charters, Statutes, and Privileges.* The colonists had acquired certain rights and liberties as English subjects, of which much was heard in the Revolutionary period. These were summed up by the first Continental Congress in impressive form. On October 14, 1774, it adopted the following, among other resolutions:

That the inhabitants of the English Colonies in North America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following Rights:

Resolved, N. C. D. 1. That they are entitled to life, liberty, & property, and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent.

Resolved, N. C. D. 2. That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects within the realm of England.

Resolved, N. C. D. 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy. . . .

Resolved, N. C. D. 5. That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

Resolved, 6. That they are entitled to the benefit of such of the English statutes as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

Resolved, N. C. D. 7. That these, his majesty's colonies, are likewise entitled to all the immunities and privileges granted & confirmed to them by royal charters, or secured by their several codes of provincial laws.[17]"

These privileges not only had a great influence in developing the politico-religious-freedom guarantees of the American Constitution, but even before its adoption tended to influence official British colonial governments as well as the proprietary ones, in the way of ameliorating the intensity both of the narrow ecclesiastical regulations of Puritanism in New England and of Anglicanism in some parts of the South.

(16) THE SEVENTEENTH AND EIGHTEENTH CENTURY PHILOSOPHERS—THE ENLIGHTENMENT AND NATURAL LAW; JOHN LOCKE

We have neither the space nor the inclination to discuss at any length the contribution of the physical and mathematical scientists such as Sir Isaac Newton (1642–1727), or of the more speculative early modern continental philosophers, both of which groups did much to broaden the minds of men, and consequently in the end to contribute to the cause of religious freedom. It is necessary, however, to name in passing René Descartes (1596–1650), whose attitude of questioning everything until reduced to the reality of his own thinking process—*cogito ergo sum*—contributed to weaken the unquestioned control of authoritarian religion of every form and to the development of intellectual independence; and Gottfried Leibnitz (1646–1716), who tried by his *Systema theologicum* (1683) and other efforts to bring about a religious understanding between Protestants and Catholics on the basis of a minimum of dogma and a generous, all-comprehensive spirit of tolerance. When this proved impossible he

tried to accomplish the same between the Lutheran and Reformed Churches. But these continental thinkers were outside the main stream of influence on America, which centered, as we shall see, in John Locke (1632–1704).

Yet at least five French philosophers—Bayle, Montesquieu, Rousseau, Condorcet, and Voltaire—influenced the political and social thinking of Thomas Jefferson and a few of the other more liberal statesmen of our Revolution.

Pierre Bayle (1647–1706) was a professor of philosophy and history first at Sedan in France, later at Rotterdam. He began life as a Calvinist, later joined the Roman Catholic Church, and ended as a Protestant. We think of him primarily for his authorship of the monumental *Dictionnaire historique et critique* (1697), which broadened men's minds and profoundly influenced both Locke and the Encyclopedists, and for his advanced writings advocating religious toleration and condemning the use of force in the case of religious differences. Of these writings the most important was the *Commentaire philosophique sur ces paroles de Jésus Christ: Contrains-les d'entrer,* published in 1686, and after his death the two supplements, all under the same title and the subtitle *Traité de la Tolérance universelle,* 1713. The work is highly important, taking the ground that coercion in matters of religion is contrary to the teachings of Christ and of the early Church, and that error can be confuted only by reason.[180]

Charles Louis Montesquieu (1689–1755) was a believer in a written constitution. His *L'esprit des lois* appeared in 1748, with its comparative study of the ideas of a republic, a monarchy, and a despotism; a modification of Aristotle's classification of governments by the many, the few, and the one. This did much to give our early students of government a good basis in the science of comparative politics and the philosophy of history; all presented in a spirit of moderation, tolerance (both political and religious), and earnest desire for the improvement of humanity's lot.

Jean Jacques Rousseau (1712–78), whose *Contrat social,* with its theory of popular sovereignty and the need of full citizenship for the complete development of manhood, appeared in 1762. This encouraged the hope of the less privileged by emphasis on the worth and potentiality of man, and the possibility of an organization of society in which the majority should rule, and equality and justice prevail. These ideas of the possibility of human progress were largely derived from the Abbé de Saint Pierre (1658–1743). Government was to be based on the consent, direct or implied, of the governed. Rousseau was interested in opposing intolerance, rather than in advocating religious freedom. Both his life and his thinking left much to be desired, but he at least opposed atheism and materialism, and taught that the State must interest itself in trying to develop perfect men and citizens. He believed that the only guarantee that citizens would

be law-abiding was in an inner sense of responsibility which religion alone could provide. He therefore proposed a development of natural religion which he called *religion civile,* which centered in a belief in a God of justice and a faith in immortality.

Marie Jean de Condorcet (1743–94) was one of the most influential of the Encyclopedists. He favored the Revolution but not its extremes. He was a passionate believer in the progress of humanity and the latent perfectibility of man. We remember him for his support of the separation of Church and State—*Sur l'intérêt des princes à séparer la religion de l'État.* He was not sympathetic with historic Christianity as generally accepted, but he was a man of high purpose, pure character, a believer in democracy, in public education, in constitutional government, in the suppression of slavery. It is not without significance in considering his influence on American thought that he was elected a member of the American Philosophical Society of Philadelphia. His views on the significance of the American experiment will be quoted later.[181]

François Marie de Voltaire (1694–1778), man of letters, was perhaps the most interested among his French contemporaries in the separation of Church and State and in religious freedom. He wrote much on the subject, and tried to show by many arguments that the State should be tolerant. If non-Christian monarchs could permit various Christian sects, Christian governments should do at least as much.

> Let us get out of our grooves and study the rest of the globe. The Sultan governs in peace twenty million people of different religions; two hundred thousand Greeks live in security at Constantinople; the *muphti* himself nominates and presents to the emperor the Greek patriarch, and they also admit a Latin patriarch. The Sultan nominates Latin bishops for some of the Greek islands, using the following formula: "I command him to go and reside as bishop in the island of Chios, according to their ancient usage and their vain ceremonies. . . ."[182]

He was particularly opposed to any State Church with exclusive rights and privileges.

> . . . The more sects there are, the less danger in each. Multiplicity enfeebles them. They are all restrained by just laws which forbid disorderly meetings, insults, and sedition, and are ever enforced by the community.[183]

He saw clearly that tolerance was not enough; there must be real freedom. He said many unfair and untrue things about religion and the Church, but these and other words about the vital importance of religious liberty deserve to be quoted with appreciation.

Je ne viens pas prêcher la tolérance; la liberté la plus illimité de religion est à mes yeux un droit si sacré, que le mot tolérance, qui voudrait l'exprimer, me parait en quelque sort tyrannique lui-même, puisque l'autorité qui tolére, pourrait ne pas tolérer.[184]

It was this spirit that led him to devote three years, with final success, to securing justice for the family of Jean Calas (1698–1762), a Calvinist victim of religious persecution, whose torture and burning had shocked Europe.

Voltaire had a passionate interest in giving men freedom to oppose despotism, bringing everything to the touchstone of natural law, natural rights, and natural religion. He saw the difference between religious opinions and religious acts. He said: "For government to have the right to punish the errors of men, it is necessary that these errors be crimes; and they are crimes only when they trouble society."[185] He was not a constructive statesman, or a systematic philosopher, but he yearned to create conditions which would encourage freedom of thought.

Voltaire's historical writings began to be known in America as early as 1744,[186] and by 1765 both the *Lettres philosophiques*, including an English edition with the title *Letters on the English*, and the *Traité sur la tolérance*,[187] were having their influence on ideas of religious freedom, and the latter was frequently quoted in newspapers and magazines.[188] Voltaire admired the Quakers of Pennsylvania and expressed the desire to settle among them.[189] The first six presidents of the United States all had his books in their libraries.[190] He was specially admired by Franklin, who as early as 1764 referred with appreciation to what he understood to be his broad views of religious toleration.[191] This made him a hero to the deists, but to the orthodox he was anathema, as is shown by Timothy Dwight's dedicating to him in 1788 his *Triumph of Infidelity*.

These five men, and most of the other French philosophers of the eighteenth century who influenced Jefferson and his associates, were believers in natural law, the law derived from God which shows itself in creation and in the working of the universe. This appears plainly in the thought and expression of the Declaration of Independence. A recent writer on "The Political Philosophy of Thomas Jefferson," Professor Carl Becker, quotes the French skeptic Volney (1757–1820) as giving classic expression to the doctrine.

Natural law is the regular and constant order of facts by which God rules the universe; the order which his wisdom presents to the sense and reason of men, to serve them as an equal and common rule of conduct, and to guide them, without distinction of race or sect, towards perfection and happiness.[192]

This natural law, of which the Stoics[193] were the first exponents, and which

the Church early adopted as providing a moral basis for all social institutions, stood for the conviction, which Protestant, Catholic, and Jew could equally accept, that a moral law actually exists implanted in man by God; that it can be discerned by the reason; and that to it all men and nations are subject. It does not necessarily prevent special revelations of God, but it does assume that these are all manifestations of divine law rather than infringements of it. It stresses particularly man's divine origin and consequently his potentiality and high destiny, as well as the essential equality of men as far as human rights are concerned. "All men are by nature equal," as Gregory the Great (*c.* 540–604) asserted over thirteen hundred years ago: *omnes namque natura aequale sumus.*[194] These features of the natural law have a long history. Jacques Maritain, after referring to the fact that in his judgment the philosophers of the eighteenth century, to whom we are directly indebted for the natural law theory, more or less debased it, traces its earlier and truer history to Grotius, Suárez, and Francisco Vittoria, Thomas Aquinas, Augustine, the Church fathers, St. Paul, Cicero, the Stoics, and some of the great moralists and poets of antiquity, such as Sophocles. He believes that the *Antigone* should be considered "the eternal heroine of natural law," called by the ancients "the unwritten law."[195] There are some important names in the table of descent that Maritain does not give, especially John Locke, Kant, Sir Isaac Newton, Gregory the Great, whom we have already quoted, and some of the founders of the Roman law.

The influence of this theory in public law, often referred to as the doctrine of "natural rights," developed by the eighteenth-century philosophers, and studied by Thomas Jefferson and some of his associates, is clearly seen in the Declaration of Independence, and gives it its spiritual, creative note and its enduring vitality. Indeed, it has a definitely religious atmosphere, so much so that its commentators have frequently called attention to the fact that it was essentially an interpretation in liberal and secular terms of the Christian theory as to man's origin, nature, and destiny.[196] These words in the Declaration cannot be too much emphasized as showing that Church and State in America share a basic creed: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness." Jefferson's original draft was even more emphatic in asserting that these truths were "sacred and undeniable."

Such ideas as the dignity of man as God's creation; the perfectibility of man and of society; the need of representative institutions secured by majority decisions to insure order, liberty, and justice; and the importance of freedom of thought, discussion, and action in its various forms, were part of the political

philosophy of advanced thinkers at the time of the formation of our government. They came to us through the European philosophers who, although reacting against all forms of ecclesiasticism, had been influenced more than they realized by the Christian tradition, especially in its emphasis on the supreme worth and dignity of every human being in the sight of God, the Father of all men.[197]

This fundamental emphasis on the rights of every individual as such, and consequently the limitation on the power of the State, was brought out clearly in an address adopted by the Continental Congress April 26, 1783. It had to do with the debts of the United States, and was drawn up by James Madison, whose colleagues on the committee were Oliver Ellsworth and Alexander Hamilton. They were men who differed largely in points of view, but they united in the statement which included this paragraph:

> Let it be remembered finally, that it has ever been the pride of and boast of America, that the rights for which she contended, were the rights of human nature. . . .[198]

This was a point of view which goes back to the Bible and some of the classical writers, but which America owed primarily to the English and French philosophers of the eighteenth century. They gave it directly to Jefferson and his associates, and it has since given profound backing to the idea of democracy, which is and must forever be based on a due recognition of the inherent rights of every individual because of his divine birthright. Fortunately there has, lately, been a distinct revival of this theory of natural law and natural rights. It has been specifically noticeable in many of the decisions of the Supreme Court. Dean Pound noticed this revival in a study which he made of court decisions in 1924,[199] and the emphasis has been even more marked since, due perhaps in part to reaction against the Nazi ideas of the "master race" and the resulting denial of the same rights to other racial groups except when the *Herrenvolk* deigned to grant them.

Germany influenced our views of religious liberty indirectly through Luther, and through the philosophers and jurists who helped to develop, on the basis of Stoic teaching and Christian philosophy, the theories of natural law and of natural rights in the seventeenth and eighteenth centuries. Hugo Grotius (1583–1605), one of the founders of international law, and a great Dutch scholar, had led the way by his *De jure belli et pacis* (1623).

Here are a few of the great names for which Americans should be grateful:

Samuel Pufendorf (1632–94). A promoter of the law of nature and of nations; held professorships in this subject at Lund and Heidelberg. He believed that the

will of the people constitutes the State, and that nations, like communities, should work together for the common good. To him international law was part of natural law. His great work, *De jure naturae et gentium*, appeared in 1692.

Christian Thomasius (1655–1728). He incidentally began a new epoch by delivering his university lectures at Leipzig in the vernacular instead of in Latin; published his *Institutiones jurisprudentiae divinae* in 1688. He was a man of breadth and tolerance, a vigorous opponent of the punishment of heretics and of the use of torture.

Gottfried Wilhelm Leibnitz (1646–1716). Stood for natural law; a close relationship between every individual and the world at large; harmony in the universe, although made up of diverse monads; and freedom for the individual as a "rational soul" belonging to the "republic of spirits," at the head of which stands God. Leibnitz, whose work was the foundation of the philosophy of the Enlightenment, was interested in the politics of Europe and in plans for the ecclesiastical unity of Christendom.

Immanuel Kant (1724–1804). Not only did Kant place emphasis on God and freedom, but we feel specially grateful for his laying down what became a cardinal principle of liberal political thinking. Writing in 1785 in *The Fundamental Principles of the Metaphysics of Morals*, he said:

> Now I say: man and generally any rational being *exists* as an end in himself, *not merely as a means* to be arbitrarily used by this or that will, but in all his actions, whether they concern himself or other rational beings, must be always regarded at the same time as an end. . . . Accordingly the practical imperative will be as follows: So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only.[200]

This attitude, opposed to all imperialism and totalitarianism, is to be supplemented by Kant's "categorical imperative," the most famous and influential of his teachings: "Act as if the maxim of thy will, were to become, by thy adopting it, a universal law of nature." This teaching strengthened the Calvinists' emphasis on personal responsibility and accountability, and tended to strengthen the ideal of democratic citizenship; while the emphasis in the *Critique* (1781) that the great ideas and ideals which dominate men, such as those of God, freedom, and immortality, transcend sense experience, gave Christian philosophers a support in their advocacy of a personal, spiritual religion which the State could not dictate.[201]

For direct influence on American thinking—outside of some of the views of John Calvin[202]—we must, however, turn principally not to the philosophers of France or Germany, but to those of England. Here John Locke (1632–1704)

was the most influential, and our main attention must be given to him; though a few earlier names deserve brief mention.

We may start with Richard Hooker (1554–1600), an Anglican divine, frequently referred to as the "judicious Hooker" because of the fair and tolerant attitude shown in *The Laws of Ecclesiasticall Politie* (1594). Its theory that consent formed the basis of government greatly influenced Locke himself; so also did Hooker's views regarding the natural equality of men. In the "Second Treatise on Civil Government" Locke thus refers to this matter:

> This equality of men by nature the judicious Hooker looks upon as so evident in itself and beyond all question, that he makes it the foundation of that obligation to mutual love amongst men on which he builds the duties they owe one another, and from whence he derives the great maxims of justice and charity.[203]

Hooker derived all law from God. He laid emphasis on the fact that the law of progress could be followed if men learned to know natural laws, human laws, and supernatural laws.[204] He emphasized a right balance among these, as he did among reason, Scripture, and tradition as our foundations of truth, being himself well balanced, and not overemphasizing any one aspect. His breadth of view was also shown in his attitude toward the Church, which in his view included all who own Jesus Christ as Lord, who embrace the faith He published, and who have been baptized. These are the only three necessary tests.[205] This, it will be seen, was a far broader view than that generally current in his time.

Hooker, however, is not to be remembered so much for his specific views on Church or Church-State matters, as for the tolerant spirit which he showed in an age of intolerance, where each group was striving for the mastery. As the late Dr. David S. Schaff, a Protestant authority, in no way connected with Anglicanism, put it: Hooker "stands as the representative of toleration in the sphere of ecclesiastical polity and the advocate of the claims of reason against that narrow scripturalism which assumes to tolerate nothing which the Scriptures do not *expressly* command."[206] His works, in beautiful English, were entirely free from vituperation, and were written with great temperance and without any attempt to discredit the Presbyterian system, although he was himself answering the attacks of Puritans who disliked his lack of sympathy with Calvinism and his extending of salvation to Roman Catholics.

Another important Englishman of the period, though not a liberal, was Thomas Hobbes (1588–1679), whose *Leviathan* (1651) is the classic example of the dominance of secular authority. It must be remembered, however, that his form of totalitarianism was advanced in the interest of defending the security and interest of the individual, for whom the government existed, rather than

for itself. Power is derived from the people, even though exercised by one or more individuals to whom, or by an assembly to which, they have yielded their power. They must accept what this sovereign decides. Consequently the liberty that Hobbes stood for was the liberty of the commonwealth, rather than the liberty of the individual man, who has handed over his powers to the State.

Hobbes' materialistic, state-centered, and authoritarian attitudes, as well as certain contemporary sacerdotal and obscurantist views, were opposed by the Cambridge Platonists, Benjamin Whichcote (1609–83), Henry More (1614–87), and their associates. They stood for what came to be called latitudinarian views, especially for a reconciliation of reason and religion, a tolerant spirit, and the right of independent thinking. Thus, although influential mainly on a small group of men of culture, they deserve grateful mention in a work devoted to religious freedom. More, in particular, had considerable influence on John Wesley, although the latter laid much greater emphasis on evangelical religion.

But it was John Locke (1632–1704) who of all modern philosophers carried the most weight among statesmen such as Thomas Jefferson and James Madison, who in turn laid the framework of our civil and religious liberties.[207] This was partly because his philosophical views on liberty were clearly and simply expressed, especially in his *Letters on Toleration* (1689–92) and his *Two Treatises of Government* (1690), and were widely read. Several of his writings were printed in the United States prior to the Revolution. For example, his letter *Concerning Toleration* appeared in Boston in 1743 and was later reprinted. Similarly, his essay on *Civil Government* appeared in Boston in 1773.[208] He taught that the magistrate had no authority to rule over souls; that religion must depend on inward conviction, not on external compulsion; that the rights of conscience in matters of personal religious faith must be treated with respect. He tells us that he based this last conclusion not on the natural tolerance of the English people, but on a study of the intolerance of various groups, including Anglicans and Scotch Presbyterians.

He also believed in government by consent, and maintained that liberty, along with life and property or "estate," were inalienable rights of every individual. They antedated government, being inherent or natural to men; hence the implications for freedom of the emphasis on natural law by the political thinkers, who, influenced by Locke, were mainly responsible for the Declaration of Independence and the American form of government. This theory remained almost unquestioned for half a century, until attacked by John C. Calhoun (1782–1850) and others, who saw that it contravened slavery. It is still recognized as having large ethical significance, and is specially important for the cause of religious freedom.

To get the clearest idea of Locke's views on toleration, one has to study the

edition of his works on this subject published in 1765. This contains the five letters which are so frequently confused. These, with their dates, are as follows:

Epistola de Tolerantia (1689)
A Letter concerning Toleration (1689)
A Second Letter concerning Toleration (1690)
A Third Letter for Toleration (1692)
A Fourth Letter for Toleration (1706)

The last named was not published until after his death. This particular edition, with its useful preface and the first letter, were the books which made Locke's views best known to the founders of our government. Of the different documents the English edition of the letter of 1689 is by far the most important. Some extensive quotations from it are necessary to any adequate understanding of the Church-State relations which developed under our Federal and state constitutions and bills of rights.

Locke begins with a statement as to the vital importance of toleration, which he considers "the chief characteristical mark of the true church." He takes the ground that "no man can be a Christian without *charity*, and without *that faith which works*, not by force, but *by love*."[209] He lays emphasis on the increase of the Church through preaching the gospel of peace and through holy lives, rather than through the use of the sword.

As to the commonwealth, he defines it as "a society of men constituted only for the procuring, preserving, and advancing their own *civil interests*."[210]

He then takes up the matter of spiritual interests, though he does not use this particular phrase.

> Now that the whole jurisdiction of the magistrate reaches only to these civil concernments; and that all civil power, right and dominion, is bounded and confined to the only care of promoting these things; and that it neither can nor ought in any manner to be extended to the salvation of souls, these following considerations seem unto me abundantly to demonstrate,
>
> *First*, Because the care of souls is not committed to the civil magistrate, any more than to other men. It is not committed unto him, I say, by God; because it appears not that God has ever given any such authority to one man over another, as to compel any one to his religion. . . .
>
> *In the second place*, The care of souls cannot belong to the civil magistrate, because his power consists only in outward force: but true and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God. . . .
>
> *In the third place*, The care of the salvation of mens souls cannot belong to the magistrate; because, though the rigour of laws and the force of penalties were capable

to convince and change mens minds, yet would not that help at all to the salvation of their souls. . . .[211]

Locke gives a definition of the Church, which was to become classic in American political thinking: "A church then I take to be a voluntary society of men, joining themselves together of their own accord, in order to the public worshipping of God, in such a manner as they judge acceptable to him, and effectual to the salvation of their souls."[212] He proceeds to show that the Church, as understood, is a self-governing institution independent of State control and answers the arguments of those who think otherwise.

. . . But since the joyning together of several members into this church-society, as has already been demonstrated, is absolutely free and spontaneous, it necessarily follows, that the right of making its laws can belong to none but the society itself, or at least, which is the same thing, to those whom the society by common consent has authorized thereunto.[213]

As to the results of toleration, his views are clear-cut.

And first, I hold, That no church is bound by the duty of Toleration to retain any such person in her bosom, as after admonition continues obstinately to offend against the laws of the society. . . .

Secondly, No private person has any right, in any manner, to prejudice another person in his civil enjoyments, because he is of another church or religion. All the rights and franchises that belong to him as a man, or as a denison, are inviolably to be preserved to him: These are not the business of religion. No violence nor injury is to be offered him, whether he be Christian or Pagan. Nay, we must not content ourselves with the narrow measures of bare justice: Charity, bounty, and liberality must be added to it. . . .

What I say concerning the mutual toleration of private persons differing from one another in religion, I understand also of particular churches; which stand as it were in the same relation to each other as private persons among themselves, nor has any one of them any manner of jurisdiction over any other, no not even when the civil magistrate, as it sometimes happens, comes to be of this or the other communion. For the civil government can give no new right to the church, nor the church to the civil government. . . .[214]

In the last place. Let us now consider what is the magistrate's duty in the business of Toleration: which certainly is very considerable.

We have already proved, that the care of souls does not belong to the magistrate: not a magisterial care, I mean, if I may so call it, which consists in prescribing by laws, and compelling by punishments. But a charitable care, which consists in teaching, admonishing, and persuading, cannot be denied unto any man. The care therefore of

every man's soul belongs unto himself, and is to be left unto himself. But what if he neglect the care of his soul? I answer, what if he neglect the care of his health, or of his estate, which things are nearlier related to the government of the magistrate than the other? Will the magistrate provide by an express law, that such an one shall not become poor or sick? Laws provide, as much as is possible, that the goods and health of subjects be not injured by the fraud or violence of others; they do not guard them from the negligence or ill-husbandry of the possessors themselves. No man can be forced to be rich or healthful, whether he will or no. . . .[215]

But after all, the *principal consideration*, and which absolutely determines this controversie, is this. Although the magistrate's opinion in religion be found, and the way that he appoints be truly evangelical, yet if I be not thoroughly persuaded thereof in my own mind, there will be no safety for me in following it. No way whatsoever that I shall walk in against the dictates of my conscience, will ever bring me to the mansions of the blessed. I may grow rich by an art that I take not delight in; I may be cured of some disease by remedies that I have not faith in; but I cannot be saved by a religion that I distrust, and by a worship that I abhor. It is in vain for an unbeliever to take up the outward shew of another man's profession. Faith only, and inward sincerity, are the things that procure acceptance with God. The most likely and most approved remedy can have no effect upon the patient, if his stomach reject it as soon as taken. And you will in vain cram a medicine down a sick man's throat, which his particular constitution will be sure to turn into poison. In a word: Whatsoever may be doubtful in religion, yet this at least is certain, that no religion, which I believe not to be true, can be either true, or profitable unto me. In vain therefore do princes compel their subjects to come into their church-communion, under pretence of saving their souls. If they believe, they will come of their own accord; if they believe not, their coming will nothing avail them. How great soever, in fine, may be the pretence of goodwill and charity, and concern for the salvation of mens souls, men cannot be forced to be saved whether they will or no. And therefore, when all is done, they must be left to their own consciences.[216]

Regarding the duty of the magistrate in church and religious matters he says further:

As the magistrate has no power to *impose* by his laws, the use of any rites and ceremonies in any church, so neither has he any power to *forbid* the use of such rites and ceremonies as are already received, approved, and practised by any church: because if he did so, he would destroy the church itself; the end of whose institution is only to worship God with freedom, after its own manner.

. . . The part of the magistrate is only to take care that the common-wealth receive no prejudice, and that there be no injury done to any man, either in life or estate. . . .

By this we see what difference there is between the church and the common-wealth. Whatsoever is lawful in the common-wealth, cannot be prohibited by the magistrate in the church. Whatsoever is permitted unto any of his subjects for their ordinary use,

neither can nor ought to be forbidden by him to any sect of people for their religious uses. If any man may lawfully take bread or wine, either sitting or kneeling in his own house, the law ought not to abridge him of the same liberty in his religious worship; though in the church the use of bread and wine be very different, and be there applied to the mysteries of faith, and rites of divine worship. But those things that are prejudicial to the commonweal of a people in their ordinary use, and are therefore forbidden by laws, those things ought not to be permitted to churches in their sacred rites. Only the magistrate ought always to be very careful that he do not misuse his authority, to the oppression of any church, under pretence of public good.[217]

In the matter of toleration Locke makes three exceptions:

First, No opinions contrary to human society, or to those moral rules which are necessary to the preservation of civil society, are to be tolerated by the magistrate. . . .

Again: That church can have no right to be tolerated by the magistrate, which is constituted upon such a bottom, that all those who enter into it, do thereby *ipso facto,* deliver themselves up to the protection and service of another prince. For by this means the magistrate would give way to the settling of a foreign jurisdiction in his own country, and suffer his own people to be listed, as it were, for soldiers against his own government. . . .[218]

The illustrations which he gives to emphasize this point were tactfully taken from Mohammedanism, but from other references it is probable that he had in mind the Roman Catholic Church of his time, especially as he adds that the "fallacious distinction between the court and the church does not afford any remedy to this inconvenience."[219]

Lastly, Those are not at all to be tolerated who deny the being of a God. Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist. The taking away of God, tho' but even in thought, dissolves all. Besides also, those that by their atheism undermine and destroy all religion, can have no pretence of religion whereupon to challenge the privilege of a toleration.[220]

He draws his letter to a close by saying: "The *sum of all* we drive at *is, that every man may enjoy the same rights that are granted to others.*"[221]

. . . But those whose doctrine is peaceable, and whose manners are pure and blameless, ought to be upon equal terms with their fellow-subjects. Thus if solemn assemblies, observations of festivals, public worship, be permitted to any one sort of professors; all these things ought to be permitted to the *Presbyterians, Independents, Anabaptists, Arminians, Quakers,* and others, with the same liberty. Nay if we may openly speak the truth, and as becomes one man to another, neither *Pagan* nor *Mahumetan,* nor *Jew,* ought to be excluded from the civil rights of the commonwealth, because of his religion. The Gospel commands no such thing. . . .[222]

Such an outline is the epoch-making first *Letter Concerning Toleration* of John Locke. He probably little realized that it would have such an enormous influence on American thinking. It contains, however, a reference to America which I have not seen quoted, and which shows that, although Locke was himself a member of the Anglican communion, he felt that the Puritans were perfectly justified, if they wished, in worshiping God in other ways. Here are his words:

> . . . Not even *Americans,* subjected unto a Christian prince, are to be punished either in body or goods, for not embracing our faith and worship. If they are persuaded that they please God in observing the rites of their own country, and that they shall obtain happiness by that means, they are to be left unto God and themselves. . . .[223]

These liberal views on the subject of religious freedom are eloquently enshrined in the "fundamental constitution" which he drew up for the proprietary colony of Carolina and which were adopted by it in 1669. Unfortunately, as we shall see in discussing the struggle for religious freedom in North Carolina,[224] they were modified so as to make the Church of England the official colonial church, and even so they were not fully observed during the quarter century when they were nominally in force. They provided, however, at least on paper, the most liberal conditions known at the time in the colonial world outside of Rhode Island.

Some idea of Locke's influence on American thought at the time of the American Revolution may be seen by quotations from Samuel Adams (1722–1803), recognized as one of the most vigorous of the early leaders of independence. In November, 1772, as a member of the Committee of Correspondence of Boston, he drew up a statement of the rights of the colonists as men, as Christians, and as subjects. On the "Natural Rights of the Colonists as Men," he said in part:

> As neither reason requires nor religion permits the contrary, every man living in or out of a state of civil society has a right peaceably and quietly to worship God according to the dictates of his conscience.
>
> "Just and true liberty, equal and impartial liberty," in matters spiritual and temporal, is a thing that all men are clearly entitled to by the eternal and immutable laws of God and nature, as well as by the law of nations and all well-grounded municipal laws, which must have their foundation in the former.
>
> In regard to religion, mutual toleration in the different professions thereof is what all good and candid minds in all ages have ever practised and, both by precept and example, inculcated on mankind. And it is now generally agreed among Christians that this spirit of toleration, in the fullest extent consistent with the being of civil society, is the chief characteristical mark of the true Church. Insomuch that Mr. Locke has asserted and proved, beyond the possibility of contradiction on any solid ground,

that such toleration ought to be extended to all whose doctrines are not subversive of society. The only sects which he thinks ought to be, and which by all wise laws are excluded from such toleration, are those who teach doctrines subversive of the civil government under which they live. The Roman Catholics or Papists are excluded by reason of such doctrines as these, that princes excommunicated may be deposed, and those that they call heretics may be destroyed without mercy; besides their recognizing the Pope in so absolute a manner, in subversion of government, by introducing, as far as possible into the states under whose protection they enjoy life, liberty, and property, that solecism in politics *imperium in imperio,* leading directly to the worst anarchy and confusion, civil discord, war, and bloodshed.

The natural liberty of man, by entering into society, is abridged or restrained, so far only as is necessary for the great end of society, the best good of the whole. . . .[225]

Locke believed that sovereignty resided in the people, and supported the "social contract" theory of government and the right of revolution such as that exercised by the English people in 1688. In at least one major matter, however, the framers of our Constitution went beyond his views—by not denying full civic rights to atheists and Roman Catholics, whose activities he considered inimical to the State, the first because they recognized no allegiance to a God who controlled social conduct, the second because they held allegiance to one whom he considered a foreign potentate. But Locke's views about the papacy were based on conditions of two centuries and a half ago in Europe. Since that time Church–State relations from a Catholic standpoint have in theory remained virtually the same, but in practice they have been modified to meet the conditions of many modern states, so that if living today Locke would probably be less severe in his attitude and criticisms.

An English thinker closely related to Locke was Algernon Sidney (1622–83), who was, more than we realize today, a highly influential factor in developing our American constitutional theories. He was a strong supporter of parliamentary government, defended opposition to the tyranny or misrule of a monarch, and advocated both man's natural rights to liberty and the compact theory of government—all ideas that had much weight with the framers of our government. They also appreciated his warm friendship with William Penn, some of whose liberal views he shared.

Gaillard Hunt (1862–1924) tells us that Sidney was a hero to the Americans of 1776, and that a copy of his *Discourses concerning Government,* printed in 1698 after his death, which told of the Filmer–Bellarmine controversy, was then in every large American library. It was frequently reprinted in England, once only about a decade before the American Revolution, and an edition was published in Philadelphia as late as 1804. Thomas Jefferson had a copy in his

library, and from it he doubtless knew not only Sidney's views but those of Cardinal Bellarmine. The book was an answer to Sir Robert Filmer's *Patriarcha, or the Natural Power of Kings* (1680), a high Tory type of manifesto rebuked by Locke, which had given and criticized the relatively liberal views of the Cardinal regarding the rights and liberties of man. Sidney tells us in the opening sentence of his book that he had recently studied Filmer's *Patriarcha* with its "universal and undistinguished right of all kings," and had decided to examine its doctrines, which were what we would call today highly reactionary. They were consequently offensive to a constitutional liberal of his type, who believed "that man is naturally free; that he cannot justly be deprived of that liberty without cause"; that of governments those only "can be called just which are established by the consent of nations"; and that "of all government, democracy in which every man's liberty is least restrained because every man hath an equal part, would certainly prove to be the most just, rational and natural."[226] The day of his execution (December 7, 1683) he gave the sheriff a paper in which among other things he outlined his views as given in his published work.

> . . . And I am persuaded to believe that God had left nations to the liberty of setting up such governments as best pleases themselves.
>
> That magistrates were set up for the good of nations, not nations for the honour and glory of magistrates.
>
> That those laws were to be observed, and the oaths taken by them, having the force of a contract between magistrates and people, could not be violated without danger of dissolving the whole fabric.
>
> That usurpation could give no right. . . .[227]

Such were views which Sidney supported in his attack on Filmer's *Patriarcha*. He found himself much more sympathetic with Cardinal Bellarmine's views on this subject, which have been discussed in a previous section.[228]

Joseph Priestley (1733–1804), whose *Essay on Government* appeared in 1768, was another of the men who did much to popularize for American readers the general views of Locke and the other philosophers we have named. He was a Unitarian who went beyond Locke in his ideas of toleration, including Roman Catholics in its scope. His liberal ideas and sympathy with many features of the French Revolution made him much more *persona grata* to American statesmen than he was to those in England, so that it was not strange that he moved to America in 1794. Here he was influential in the more advanced political, scientific, and religious circles. He dedicated to Thomas Jefferson the second volume of his *General History of the Christian Church*, and influenced him by his *History of the Corruptions of Christianity*, and by his *Essay on the First Principles of Government, and on the Nature of Political, Civil and Religious Liberty*.

Most of the more liberal philosophers of the time had been influenced by the tolerant and unorthodox spirit of the Renaissance as it was being adjusted to meet the social needs of the century which preceded the French Revolution. It was reacting against despotism whether it appeared in Church or State. The philosophers developed ideas of the inherent rights of man, of a larger freedom, of the independence of the State from Church control, of religious toleration, and of opposition to all forms of arbitrary government, which were to bear much fruit in America. Their tendency was to go back of man-made law to the sanctions of the law of Nature. To declare, as many of them did, that human laws lacked validity unless based on this original and fundamental law, was important from the point of view both of civil and religious liberty. This idea is prominently found in our Declaration of Independence.[229] It also underlies the "Declaration of the Rights of Man," adopted by the Constituent Assembly in France in August, 1789. This is generally considered the greatest contribution of the French Revolution to democracy and religious freedom, but it was influenced by American political thought, and in turn influenced it, especially through Jefferson.[230]

(17) THE METHODIST MOVEMENT

We deal elsewhere with the history of the Methodist Church in this country.[231] Here we shall merely speak briefly of the contribution which early Methodism made to the cause of democracy and of religious freedom as embodied in the form and spirit of the American republic. Its contribution was significant, although it may be frankly acknowledged that it was not so much in any philosophy of the Church or of Church-State relations as in the field of religious spirit, attitude toward life, and social problems. We must not forget that Methodism developed as a group within the Established Church of England, and that it was not until 1784 that the movement in this country became independent of the Episcopal Church, and not until seven years later, 1791, that English Methodists separated from the Establishment.

The movement started in the meetings at Oxford in 1729 when John Wesley (1709–91), his brother Charles (1707–88), and George Whitefield (1714–70) held their meetings and consecrated themselves to the work of Christian service "by rule and method." The significant thing was that it was a movement for freedom and vitality, and in opposition to formalism and a lack of missionary zeal.[232] Its leaders felt that the Church of England was too conventional, too formal, too much interested in the aristocratic classes and the well-to-do, and not sufficiently concerned about meeting the many needs of the underprivileged. It was a definitely democratic movement. The Wesleys and Whitefield, although remaining in the Establishment, preached in fields fre-

tories, workshops, private houses, barns—anywhere, where they could reach the unchurched or the unconverted. They set apart lay preachers to evangelize, held prayer meetings, and formed societies for the purpose of making religion more vital and bringing it to the masses of men. Methodism stood for certain things that were to have great influence in America, especially for free and full salvation offered to all, and not merely designed, as in the Calvinistic system, for the elect. If any man would repent and have faith in God, as revealed in Jesus Christ, he could be converted and "saved."

It was a movement both of personal religious experience and of social responsibility, and these were two tendencies that fitted admirably into the doctrines of the Declaration of Independence and the Bill of Rights. The first was shown especially in their emphasis on personal evangelism; the second in their active opposition to slavery, the liquor traffic, and other social ills. It is interesting to note that a Roman Catholic scholar in a recent authoritative work on Church history, after quoting Lecky to the effect that John Wesley had been an effective bulwark against the invasion of revolutionary ideas from France, states that from impulses traceable to him came the temperance movement, the Sunday-school movement, the antislavery agitation, "and indirectly in a sense, Catholic Emancipation and the Oxford Movement"—a remarkable tribute from a Catholic scholar to a Protestant leader.[233]

Methodism in this country began with John Wesley's coming in 1735 to Georgia, where he spent two years. In 1766 a foothold was obtained in New York. It began to be a force in the colonies in 1769, when Francis Asbury (1745–1816) and others were ordained by John Wesley for the American mission. It became a movement of national importance after the Christmas Conference in Baltimore in 1784, when Asbury and Coke were designated as bishops, and especially after 1792, when the first General Conference was held.

It will be seen from the above that, although Methodism had no constitutional program that influenced our American form of government, its democratic spirit, freedom, and emphasis on salvation as open to all men, were powerful factors in the new democracy, and were fitted, especially under the powerful evangelistic preaching of George Whitefield, to influence profoundly what Englishmen would call the American "middle class"—the backbone of the nation. As a result of the religious enthusiasm it kindled and the reforms it introduced, Methodism was an important factor in preventing the abuses of the French Revolution being repeated in England and later in the United States. It did not arise early enough to have any large influence on the American Revolution, but in the following decade it became a factor of great importance in American life. It gave a larger and broader hope to those brought up under Calvinistic ideas of human depravity. It helped to bridge the gap between the

old aristocracy and the laboring classes; stimulated the development of a middle-class population, both in town and country; became the church of nearly half the Negro population; and with its broad democracy, its evangelical hopefulness, faith, and missionary spirit, its ethical standards, and its interest in overcoming social abuses which had developed in British and colonial life in the eighteenth century, provided a religion that was well fitted to meet the needs of the young republic. It stimulated those members of the various legislatures who did not represent the socially prominent and dominant cultural groups, and helped them to make the struggle, which had been first directed primarily against English political privilege, a struggle against political, social, and economic privilege in America.

Section 2. THE THREEFOLD COLONIAL TRADITION

Although Church–State conditions in colonial times varied in accordance with the type of colony concerned, it may be said that in general the colonies reflected largely the spirit of the home governments at the time, as far as toleration was concerned. Of course when New England was Puritan and when the Church of England was the Established Church in England, the English Church policy could not be carried out, so tolerance of dissent, when this was considered of a respectable form, was essential. The home government was generally willing to extend it to Congregationalists and Presbyterians; but not without extreme pressure to such unconventional groups as Quakers and Baptists, who not only believed in following the dictates of conscience, even if it meant opposition to the State, but were always opposed to the State–Church idea.

The Established Church, whether it was the Congregational in most parts of New England or the Church of England in most of the South, was none too friendly to dissenting groups, although matters improved after the passing of the English Toleration Act in 1689. The reverse of this statement is also true, namely, that the established churches were specially unpopular among all "dissenters." An all too common charge was that they were cursed with an "unconverted clergy"—that is, a clergy which gave more heed to the authority of the State or of secular standards than to the voice of God. A recent writer has pointed to the irony of fate that all too often the persecuted sect, after it attains the freedom for which it has fought, "becomes the stronghold of obscurantism and intolerance,"[284] while the Established Church when disestablished becomes liberal. In all there were six dominantly Anglican colonies, and three where Congregationalists were in control.

There is on record at least one well-known case where the home government took a much more liberal view than the colonial administration. It represents

one of the brightest spots in the dealings of Europe with America in the field of religious toleration. Peter Stuyvesant (1602–82), who was governor of New Amsterdam (New York), was unfriendly to the Quakers, whose street meetings and disregard of authority offended him. He banished to Holland a Friend by the name of John Bowne (d. 1662), who held Quaker meetings in his house in Flushing; but the government authorities at Amsterdam were more tolerant, and, yielding to his arguments, gave Bowne permission to return. They wrote Stuyvesant a letter (April 16, 1663) in which occur these sentences:

> We very much doubt if vigorous proceedings against them [the Quakers] ought not to be discontinued except you intend to check and destroy your populations, which, however, in the youth of your existence ought rather to be encouraged by all possible means.... The consciences of men, at least, ought ever to remain free and unshackled. Let every one be unmolested as long as he is modest; as long as his conduct in a political sense is irreproachable; as long as he does not disturb others or oppose the government. This maxim of moderation has always been the guide of the magistrates of this city, and the consequence has been that, from every land, people have flocked to this asylum. Tread thus in their steps, and, we doubt not, you will be blessed.[235]

This put an end to Stuyvesant's persecutions. He was later ashamed of his departure from the Dutch tradition of religious toleration.

The relation between Church and State, and the resulting degree of religious freedom, developed in colonial times along three independent though parallel lines: in Puritan New England, in Anglican Virginia and other Southern colonies, and in the proprietary middle and Southern provinces.

(1) PURITAN NEW ENGLAND

In any careful study of colonial New England it would be necessary to deal separately and at length with the Pilgrims of Plymouth (1620) and the Puritans of Massachusetts Bay (1630). They had all originally been Puritans—men who wished to purify the Church of England—and after about two generations of separate existence in New England, the Puritans of the Bay, who had always been nonconformists but had also become Separatists as far as the Church of England was concerned, absorbed their more liberally minded Separatist brethren of Plymouth. Now they were all grouped together as Puritans again, though the historical strains which differentiated them may long be traced. Here we must content ourselves, before taking up the most characteristic New England tradition, by outlining the leading points of difference between the two groups, and some special marks of the early Pilgrims—cautioning the reader to remember that on most important matters the two groups were not far apart. They

were almost all Calvinists, with many of the strong points and many of the limitations of John Calvin.[236]

(a) *The Pilgrims of Plymouth.* Plymouth was definitely more liberal and less theocratic than Massachusetts Bay, with which it was united in 1692 under Massachusetts' new charter of the previous year, which was somewhat more liberal in its religious aspect. In Plymouth the seal of effective authority was in the rank and file of yeomen; while in Massachusetts Bay it was in the magistrates and the ministers. The fact that the Pilgrims had organized a church before leaving Holland also gave them a more independent status than the Puritans of the Bay.

The difference between the two groups in their attitude toward the Church of England has thus been summarized by the late Professor Charles M. Andrews (1863–1943):

The Pilgrims repudiated the Church of England in all its parts, but recognised the King as their royal master; the Puritans desired to build a state without a king, and rejected as far as they dared the royal authority, but the English Church they recognized as their "dear mother" in all things spiritual and never forbade their people when in England from attending services in the parish churches.[237]

The Pilgrims had originated as a small group of Puritans who wished to go further than their colleagues in showing disapproval of the Established Church, and thus became Separatists or Independents. But it was perhaps in their more democratic spirit that the Pilgrims differed most from the Puritans. This may be seen in the Mayflower Compact, the agreement made in the cabin of the *Mayflower*, November 11, 1620, by which the forty-one male passengers extended the church compact idea to the field of civil government:

In the Name of God, Amen. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King *James*, by the Grace of God, of *Great Britain, France*, and *Ireland*, King, Defender of the Faith &c. Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first colony in the northern Parts of Virginia; Do by these presents, solemnly and mutually in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid; And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions and Offices from time to time as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience. In Witness whereof we have hereunto subscribed our names at *Cape Cod* the eleventh of *November* in the Reign of our Sovereign Lord King *James* of *England, France*, and *Ireland*, the eighteenth and of *Scotland*, the fifty-fourth. *Anno Domini*, 1620.[238]

This "compact" or voluntary agreement applying to civil life the conditions to which they were accustomed in church life, and consenting to the principle of majority rule, is specially important, since it virtually served the Plymouth colonists as their constitution, because of their inability to secure a charter from the home government. Its opening words "In the Name of God, Amen," although representing an old English legal formula may well be taken as representing the spirit in which Pilgrims, and also other less radical Puritans, undertook the work of settlement in a new land.

Evidence of the compact's influence is seen in the fact that from the earliest days a spirit of fellowship prevailed, with community worship, as shown by the institution of public thanksgiving to God,[239] and in other ways. In the early years legislation was shared in by all freemen, but later it was vested in an elected governor and general court. Not to accept election when first chosen to an office was a serious, punishable offense.[240]

The Plymouth Plantation had the good fortune of having identified with it in its early days three men of more than usual good sense and tolerance for their time: John Robinson (*c.* 1576–1625), Elder William Brewster (1567–1644), and William Bradford (1588–1657).

Robinson was the greatly respected pastor for some years of the "Separatists" from Scrooby, England, who settled in Holland. He remained with those who were planning to follow later. His parting counsel to the Pilgrims breathes a tolerant and open-minded spirit. We are told by one of those who sailed on the *Mayflower,*

> He charged us . . . to follow him no further than he followed Christ; and if God should reveal anything to us by any other instrument of his, to be as ready to receive it as ever we were to receive any truth by his ministry; for he was very confident the Lord had more truth and light yet to break forth out of his holy Word.[241]

These words fit in well with his statement that "Men are often accounted heretics with greater sin through want of charity in the judges than in the judged through defect of faith."[242] Unfortunately, this saintly and sensible man died in Leyden before he could join the group that had settled in Plymouth.

Elder Brewster, in the absence of their pastor John Robinson, served as ruling elder of the colony and conducted public worship. He too was a fair-minded, religious man averse to extremes and given to cultivating peace rather than to indulging in theological controversy or the persecuting spirit. He was so relatively liberal-minded that Dr. Samuel Eliot places him first in his eleven sketches of *Pioneers of Religious Liberty in America.*

Governor Bradford, the leader of the Plymouth colonists for over a quarter

of a century, was a man of considerable literary culture and largeness of view, without any of the extreme intolerance so often found in Massachusetts Bay in the early years. His combination of religion and public spirit, of breadth of sympathy and good sense, was to mean much to the colony and to the future nation. Stephen Vincent Benét, in the prelude to *Western Star,* brings out this idealistic side of the migration of the Pilgrims to New England so well represented by the three men mentioned:

> We must worship God as we choose. We must worship God
> Though King and law and bishop stand in the way.

It was not that they cared much about giving others this right, but the leaders at least wanted it for themselves; they felt the urge to worship as conscience dictated, and they wanted to be freed from supporting a state church which, they believed, had departed from the simple purity of the New Testament.[243]

(b) *The Puritans of Massachusetts Bay and Elsewhere.* Massachusetts Bay, with Boston, the principal town and port of entry in New England, became the colony destined to develop Puritanism in its most influential form, and to place its mark on the United States more than any other colony except Virginia, which led in the making of political constitutions. Its theologians and educators were to become famous, and their point of view was to dominate New England, although Rhode Island and Connecticut (Hartford) reacted from their extremes. Here religion, of an intolerant Calvinistic type, and government were to be closely associated in accordance with English tradition; a Puritan State-Church specially closely related to town government, gradually developing from nonconformity to take the place of the old Anglican State-Church to which they had been accustomed in England. The Church was "a carefully selected group of communicants" who emphasized their prerogatives, and who would not brook serious dissent from their duly adopted tenets. They expected the State to support public worship and suppress heresy.[244] They did not wish it to interfere in strictly religious questions, but recognized that in matters of Church government and ecclesiastical affairs State and Church should work together.

In New England the meeting house (Congregational) was frequently given a site on the public green and was used both for governmental purposes and for religious worship. It was the nucleus of every township. Furthermore, municipal and certain parochial duties were frequently performed by the same officials, and in some cases the minutes of the two organizations were kept in the same book—acts and votes of both groups being included. And yet, even in Puritan New England, a fairly clear distinction was maintained between the

functions of Church and State. For example, neither the elder was considered eligible for the civil magistracy nor the magistrate for the office of elder. The two functions were to be considered distinct.

During most of the colonial period Congregationalism was the Established Church[245] in New England, outside of Rhode Island. It received all taxes for the support of religion, although, under certain conditions in the later period, they might be designated, on request of the individual taxpayer, to another publicly recognized religious group.

The close connection between the Church and the State in Massachusetts goes back to May 16, 1631, when the Massachusetts General Court reached this decision: "Noe man shalbe admitted to the freedom of this body polliticke, but such as are members of some of the churches within the limits of the same."[246] By taking this action the government of the colony, as Professor Sweet has pointed out, "came under the indirect control of the clergy, since their influence in the admission of members to the church was decisive."[247]

The general situation with reference to the relation between the Church and the State in Massachusetts became stabilized about the middle of the seventeenth century. In 1646 the General Court of the colony advised the holding of a synod to discuss various church matters and to get the opinion of the ministers regarding them. The synod met at Cambridge in 1647 and took certain actions which are generally referred to as the Cambridge Platform. The court duly considered the synod's actions and sent them to the ministers for their consideration. At the May session in 1651 the Reverend Mr. Cotton was asked to draw up a statement regarding the objections which had been received and to forward them again to the elders of the several churches,

& to returne theire advice & helpe herein to the next session of this Generall Court, which will alwayes be zealous acording to theire duty to giue theire testimony to euery truth of Jesus Christ, though they cannot se light to impose any formes as necessary to be obserued by the churches as a bindinge rule.[248]

The final action taken at the October meeting in 1651 is a clear summary. It shows that the court originally encouraged the synod to take action on certain matters of faith and discipline; that it requested the churches to consider certain objections that had been raised to special points; and that when these had been cleared up it accepted the action of the ministers as satisfactory. In a word, the court left purely religious matters to the determination of the churches but held in its hands a large measure of responsibility for seeing that satisfactory decisions were reached.

Whereas this Court did, in the yeare 1646, giue encouragment for an assembly of the messengers of the churches in a synode, and did desire theire helpe to draw vpp a

confession of the fayth & discipline of the churches, according to the word of God, which was psented to this Court, & cõmended to the seuerall churches, many of whom returned theire approbation & assent to the s[d] draught in generall, & diverse of the churches psented some objections & doubts agaynst some perticulers in the s[d] draught, wherevppon, by order of this Court, the s[d] objections were commended to the consideracõ of the elders, to be cleared & remoued, who haue returned theire answer in writinge, which the Court, havinge pvsed, doe thankfully acknowledge theire learned paynes therein, & account themselues called of God (especially at this time, when the truth of Christ is so much opposed in the world) to giue theire testimony to the s[d] Booke of Discipline, that for the substance thereof it is that we haue practised & doe beleeue.[249]

It was only as the early settlers died off and as church membership, based on religious experience, the usual test of suffrage among the freemen, became less emphasized, that the voting privilege was extended and that both Church and State became more democratic. It should be noted, however, that Connecticut was always more liberal in this matter than Massachusetts, as in Connecticut church membership was not a legal requirement for the suffrage, Hooker believing that magistrates should be chosen by the people at large. In the towns any man of good character who believed in religion and had a competent estate might vote for local officials and for two deputies to the colonial assembly, whether a church member or not, but the general colonial affairs were in the control of freemen chosen by the general court. This group is believed to have constituted about a third of the adult males,[250] and undoubtedly almost all of them were members of the Congregational Church, and those few who were not were generally at least nominally related to it. In this connection we must remember that in the earliest days of New England each settlement or town was primarily a congregation, and that the town meeting was in most cases almost identical with the assembly of the congregation,[251] while by contrast in Virginia, where the colonists remained members of the church, the town meeting did not exist. The Puritan colonists added a plantation covenant or a civil contract to the church covenant or ecclesiastical contract, the first of a series of acts of this character which have exerted a decisive influence on American constitutional law.[252] It is important to remember that the church covenant was historically the first in order.

A few specific examples will show the close connection between the two "powers" in New England and especially in Massachusetts. When Anne Hutchinson was put out of the church in Boston the action was first taken by the church and subsequently by the magistrate; when the first council or synod was held in New England it was attended not only by twenty-three ministers from Massachusetts and two from Connecticut, but by the body of the mag-

istrates, and its expenses were met out of the general colonial treasury. The question of the limits of Church and State in matters of toleration was publicly discussed in 1677. There is among the Cotton Papers in the Prince Collection of the Boston Public Library a copy of a reply, under date of July 12, 1677, by the Reverend George Shove, and fifteen others, to the General Court upon the question: "What are those due bounds and limits which ought to be set to toleration in matters of religion?"[253] Again, the governor and his assistants in Massachusetts Bay were frequently referred to as "the nursing fathers of the churches," for they concerned themselves with all sorts of matters involving congregational life, doctrine, and policy, and played a major part in determining certain church matters such as where new arrivals among the clergy should be assigned. They even called synods of the church and ordered ministers to formulate a confession of faith and a form of discipline. Professor Sweet is perhaps right in believing that the Massachusetts clergy had a lesser part in the control of civil government than the civil government had in the control of the Church, or to use a technical term, that Massachusetts was more Erastian than theocratic, which is another way of saying that although the Church was indirectly concerned in government, government was directly concerned with the affairs of the Church.[254]

It is hard to determine relative influences such as those mentioned when two groups are so closely interrelated, but it is clear that if conditions in Puritan New England are compared with those in Anglican Virginia, the influence of the Church on public affairs will appear much greater in New England than in Virginia. And it must be remembered that Puritanism has influenced American thinking much more than Anglicanism has.

The influence of the clergy in New England was undoubtedly very large. This was due partly to their position and perhaps even more to their character and education. The Reverend Lyman Beecher (1775–1863) in his *Autobiography* makes a statement which throws a flood of light on these conditions as they survived in Connecticut well into the national period. He says that "on Election days . . . [the Congregational clergy] would talk over who should be governor, and who lieutenant governor, and who in the Upper House, and their counsels would prevail."[255]

The ministers, however, generally refrained from accepting important political office, and had to bow to the civil authorities in many Church matters. They were content so long as the State was administered by sympathetic members of their Church, and, as we shall see later, bitterly opposed the entire separation of Congregationalism from the State in its two great strongholds, Massachusetts and Connecticut.[256] In the early days, especially in Massachusetts Bay, Quakers, Baptists, and other dissenting groups were outrageously treated, but

no more so than in England at the same time. There were, however, in every age some leaders who preached tolerance, and now and then a prophet arose who saw the need of religious freedom. Most conspicuous among these was Roger Williams, but Thomas Hooker, John Clarke, Jonathan Mayhew, and others should not be overlooked,[257] although they were the exceptions. The most favorable side of Puritanism to be generally found among leaders in Church and State, in addition to personal religion and character, was a deep sense of obligation for education and public service. The Puritan ideal of responsibility for the moral standards of the community has ever since been a potent factor in American life. For this credit must be given to the teachings of the Old Testament, to which the Puritans were specially devoted.[258]

This whole interest in public affairs goes back to the fact that the settlers did not consider themselves colonists in the ordinary sense of the word. They came across the ocean to settle territory which they were to govern themselves. As early as August, 1629, an agreement was entered into by some of the leading members of the Massachusetts Bay Company. It was made

> Provided always that before the last of September next the whole government together with the Patent for the said plantacion bee first by an order of Court legally transferred and established to remayne with us and others which shall inhabit upon the said plantacion.[259]

This meant that the charter for the colony was to be carried by the settlers to New England. This fact not only had a great effect on the character and interests of the founders of Massachusetts, but explains their attitude on many matters up through the Revolutionary period.

Outside of the Plymouth settlers, whose distinctive tenets have been discussed above, the early New England colonists were merely Puritan members of the Church of England, and largely carried across the ocean inherited views of Church-State relations; the idea of the Church, however, being modified to suit their interpretation of the Bible, which was regarded as the supreme authority. Originally "dissenters" themselves, they cared little for the rights of those whom they considered dissenters in America. Some lines found in the pocket of Governor Joseph Dudley (1647–1720) after his death well expressed the conviction of most leaders of thought in New England in the seventeenth century on the question of religious freedom:

> Let men of God in court and churches watch
> O'er such as do a toleration hatch.[260]

Their meaning is clear, namely, that to tolerate the opinions of others which we believe to be wrong runs counter to Christian duty. Many ministers of the

gospel of the time considered toleration of other religions to be close to blasphemy, while the author of the first legal code for the government of Massachusetts, the Reverend Nathaniel Ward (1578–1652) of Ipswich, is quoted as saying:

It is said that men ought to have liberty of their conscience, and that it is persecution to debar them of it. I can stand amazed, then reply to this: It is an astonishment to think the brains of men should be parboiled in such impious ignorance.[261]

Let us also quote from the original quaint English of the same author's *The Simple Cobler of Aggavvam, (sic)* written in 1647:

. . . I dare take upon me, to bee the Herauld of *New England* so farre, as to proclaime to the world, in the name of our Colony, that all Familists, Antinomians, Anabaptists, and other Enthusiasts shall have free Liberty to keepe away from us, and such as will come to be gone as fast as they can, the sooner the better.

Secondly, I dare averre, that God doth no where in his word tolerate Christian States, to give Tolerations to such adversaries of his Truth, if they have power in their hands to suppresse them. . . .[262]

Concerning Tolerations I may further assert.

That Persecution of true Religion, and Toleration of false, are the *Jannes* and *Jambres* to the Kingdome of Christ, whereof the last is farre the worse. . . .[263]

And yet the Puritans had left England largely to obtain religious freedom; and their most influential leader, John Robinson, who unfortunately died in 1625 before his planned migration to New England, had said:

It is no property of religion to compel to religion what ought to be taken up freely; that no man is forced by Christians against his will, seeing that he that wants faith and devotion is unserviceable to God, and that God not being contentious, would not be worshipped of the unwilling . . . and lastly, considering that neither God is pleased with unwilling worshippers, nor Christian societies bettered, nor the persons themselves.[264]

Even John Winthrop (1588–1649), the first governor of the Massachusetts Bay Colony, in spite of his extremely conservative attitude toward democratic movements and his unfortunate sympathy with the banishment of Anne Hutchinson, seems to have accepted this position to a large extent in theory. He saw clearly what has become since Jefferson's time the very cornerstone of American theory in the State's dealings with matters of religious beliefs and practices: that a distinction should be made between beliefs as such and those which actually have resulted in the serious disturbance of the public peace. In referring to the trial in 1637 at New Towne (Cambridge), Massachusetts, of John Coggeshall (1591–1647), a prominent Boston member of the colony's General Court, he gives an illuminating contemporary account of the major accepted ground

for punishing heresy, that it caused "disturbance of the publicke peace." Here is the account in Winthrop's *A Short Story:*

. . . After these and many other speeches had passed betweene the Court and himselfe, by which it plainely appeared that he had beene a very busie instrument, in occasioning of our publike disturbances, and his justifying of Mr. Wheelewrights *Sermon;* and the Petition or Remonstrance being seditious writings, a motion was made for his banishment, but he pretended that there was nothing could be laid to his charge, but matter of different opinion, and that he knew not one example in Scripture, that a man was banished for his judgment; it was answered, that if he had kept his Judgment to himselfe, so as the publike peace had not beene troubled or endangered by it, we should have left him to himselfe, for we doe not challenge power over mens consciences, but when seditious speeches and practices discover such a corrupt conscience, it is our duty to use authority to reforme both. But though a great part of the Court did encline to a motion for his banishment, yet because his speech and behaviour at present were more modest and submisse, then formerly they had beene, and for that he excused his former intemperances by his much employment and publike businesses, it was thought fit to deliver him from that temptation; so he was onely sentenced to be disfranchized, with admonition no more to occasion any disturbance of the publicke peace, either by speech or otherwise, upon paine of banishment and further censure.[265]

Connecticut was a little more liberal than Massachusetts, as we shall see when we discuss the important figure of Thomas Hooker (1586–1647).[266] The persecuting spirit was for the most part absent, but the general Church-State setup was about the same. Non-Congregationalists had a long and hard fight, lasting until post-Revolutionary times, before they secured anything approaching equal treatment. The Connecticut State Library in Hartford has many manuscripts bearing upon this general question in the colony. These include petitions from non-Congregational ministers against the payment of rates for the support of the Congregational Church, general declarations in favor of liberty of conscience, and petitions for the privilege guaranteed by the English Toleration Act. Among the most interesting is an address of 636 members of the Church of England to the General Assembly in 1738 claiming equal privileges with the Established Congregational Church.[267]

The various steps leading up to the final victory over the "Standing Order," and the obtaining of complete religious freedom in the State in 1818, is a dramatic one which will be told later at some length.[268]

The fact is that outside of Rhode Island, where two groups of Independents —Baptists and Quakers—were powerful, and where Roger Williams[269] and John Clarke[270] proved great leaders in behalf of entire separation between Church and State, very little was accomplished in the way of religious freedom as distinct from toleration until the period of the American Revolution.[271]

The ministers were, however, almost universally ardent supporters of the natural and constitutional civil rights of the colonists. Through the annual election sermons, and in other ways, they did much to pave the way for independence,[272] and, though they did not generally realize it, independence was to lead inevitably to the separation of Church and State.

There are a few interesting exceptions to the general Puritan–Congregational pattern in colonial New England. The founder of Maine, Sir Ferdinando Gorges (*c.* 1566–1647), was an Anglican. After being long interested in New England colonization he became identified with Maine in 1622, and in 1629 became sole owner of the section between the Piscataqua and Kennebec Rivers. Under his charter of 1639, which was based largely on that of Maryland, Gorges was virtually a feudal lord palatine, and Anglicanism was the established religion. After the gradual annexation of Maine to Massachusetts, which took place by steps from 1652 to 1692, Maine became an integral part of the Puritan Commonwealth, remaining such until its separation from Massachusetts in 1820.

Another exception is even more interesting because it introduced an anomaly which has carried over into our own time. It is the case of Manchester, Vermont, where the town still collects the rents on certain old glebe lands and shares them with the Episcopal Church. This interesting exception to the New England Puritan rule is due to the fact that when Benning Wentworth (1696–1770) was colonial governor of the Province of New Hampshire, which then included what is now Vermont, in granting charters to about 125 townships in the latter states he made a reservation of a tract of some 2,500 acres in each town. This was to be considered as a grant from the British crown to enable the Church of England to get a good start and to sustain itself. The tract was to be divided into five parts, four to be held in perpetuity by the Church, its minister, its schoolmaster, and the Society for the Propagation of the Gospel, and the fifth to be given in fee to the "first minister of any religious denomination" who should settle in the township.

These grants created some difficulty even in colonial times, but naturally even more when Vermont became a state. The legislature in 1794 proceeded to confiscate the lands and authorized the several towns to take charge of them, declaring that "When the English Crown went down, the English Church also was put down." The legislature decreed that the lands set apart for the schoolmaster were to be devoted to education, and that the rent from the remaining lands was to be divided among the several churches within the township; but in 1798 the United States Circuit Court declared the act unconstitutional and it was repealed. After various other efforts a bill was passed by the legislature in 1805, directing that the glebe lands be appropriated to schools.

The matter was carried before the courts, which decided that all lands that had been granted to the Church, the minister, and the schoolmaster should pass to the control of the towns, except in Manchester and a few adjoining places, where the Episcopal Church had been and continued strong. Finally Manchester alone maintained its right, and this after a long quarrel in which the Church compromised with the town, which now gives it half the rents from the lands in question. As to the grants to the S.P.G., a case was before the Supreme Court of the United States in 1832, and these lands, which by the legislative act of 1794 had been appropriated to school purposes, were returned to the society. After various adjustments arrangements were made, these rents were and still are applied to the maintenance of the Protestant Episcopal bishop, the understanding being that those parishes which have within their bounds an old S.P.G. tract are not liable for the annual contribution for the bishop's support.[273]

These minor exceptions to the general rule of the official connection between the State and the Congregational Church in New England would have only antiquarian interest were it not that what seems to us their abnormality emphasizes the uniformity of the tradition from which they are departures.

(2) ANGLICAN VIRGINIA AND OTHER SOUTHERN COLONIES

The "Articles, Instructions, and Orders," dated November 20, 1606, and given to the London Company which established the first permanent settlement in Virginia, give perhaps the most significant pre-Puritan reference to the Christian purpose of American colonization that we have from any English source:

> . . . And wee doe specially ordaine, charge, and require, the said presidents and councells, and the ministers of the said several colonies respectively, within their several limits and precincts, that they, with all diligence, care, and respect, doe provide, that the true word, and service of God and Christian faith be preached, planted and used not only within every of the said several colonies, and plantations, but alsoe as much as they may amongst the salvage people, which doe or shall adjoine unto them, or border upon them, according to the doctrine, rights, and religion now professed and established within our realme of England. . . .[274]

This was an Anglican statement based on Protestant foundations; and the subsequent settlement at Jamestown, and Communion service held there June 21, 1607, by a Church of England minister, the greatly respected young Cambridge graduate, Robert Hunt (1568–1608), began what is often called "the Protestant Age" on this continent. Here also the Anglican–Protestant tradition was legally recognized when the first representative body of legislators to meet in North America, assembling in 1619 in their place of worship, established the

authority of the Church of England and took measures for its support. In a word, the Anglican Church became a State-Church in Virginia, much as the Puritan Church was somewhat later established in Massachusetts, but with this difference: in Virginia the State controlled the Church; in Massachusetts the Church tended to control the State. In Virginia in the seventeenth century "the Governor within his limited sphere executed the ecclesiastical prerogatives of the Crown, and in the absence of a resident Bishop, assumed a quasi-episcopal direction of the clergy."[275] His instructions and colonial statutes recognized the exclusive claims of the Church of England. This condition lasted until the Revolutionary period. Even then the leaders of the State favored the government's retaining a definite relationship between religion and education, which would mean in most communities that the Episcopal Church would continue to be responsible for the latter.

In 1784 Patrick Henry (1736–99) introduced into the House of Burgesses a proposal that "the people of the Commonwealth according to their respective abilities ought to pay a moderate tax or contribution for the support of the Christian religion, or of some Christian church, denomination or communion of Christians, or of some form of Christian worship."[276] This was voted in spite of the strong opposition of James Madison (1751–1836), and a committee was appointed to draft the necessary bill. Madison persisted, however, and, as a result of his very able "Memorial and Remonstrance," the bill[277] was defeated, leaving the way open for the Virginia Act of Toleration. In this memorial Madison says:

> Who does not see that the same authority which can establish Christianity to the exclusion of all other religions may establish, with the same ease, any particular sect of Christians in exclusion of all other sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment, in all cases whatsoever. . . . The proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every nation and religion, promised a lustre to our country and an accession to the number of its citizens. . . .[278]

The conditions in Virginia were to a large extent reproduced in the Carolinas, and during the later colonial period in Georgia and Maryland, although Georgia's original charter provided for "Liberty of Conscience for all except Papists."[279] Georgia was originally thought of as an asylum for persecuted Protestants of Europe. Indeed, we find here an early example of co-operation between religious groups remarkable for the colonial period. In 1750 the Union Society was established for charitable purposes. Its founders were a Roman

Catholic, a Jew, and an Episcopalian, and two others whose religious affiliations are not known. The society still exists.[280]

In general the Southern colonies had an official tie-up with the Anglican Church much as most of the New England colonies had with the Congregational churches. But there was one great difference. The seat of authority for Anglicanism was in England;[281] for Puritanism in New England. New England's official religion was mainly master of its own destinies; in the South official religion was not. So in the colonial period the Northern clergy developed more leadership and more influence on State policy than their Southern colleagues. Furthermore, the clergy in the Southern colonies, being by church tradition dependent on Episcopal supervision but having none except that of the distant Bishop of London, were frequently disloyal to their trust as spiritual and moral leaders, thereby helping to bring about disestablishment in Virginia about half a century before it took place in Connecticut and Massachusetts.

The Episcopal Church, especially in Virginia, has held its position of religious leadership somewhat more than the Congregational churches in New England. This is due to many factors, of which the more important are: the fact that emigrating Episcopalians at the time of the Revolution were far more numerous in New England than in the South; that the splitting off of the Unitarians and Universalists from the orthodox Congregationalists weakened the latter in New England; that more Congregationalists, including their ministers, threw their lives into the Western migration and its important missionary educational work; and that Congregationalism in the North lost more heavily to Baptists and Methodists, and especially in the Boston neighborhood to Episcopalians, while in the South the Episcopalians have lost relatively little except to their offshoot, the Methodists. It is significant that the two great colonial established Churches, Congregational and Episcopal, although still influential far above their actual numerical status, have fallen from their pre-Revolutionary leadership in numbers as first and second respectively, to ninth and seventh.[282] They are both now outstanding in their advocacy of religious freedom—in this respect showing a marked change from pre-Revolutionary times.

(3) PROPRIETARY MIDDLE AND SOUTHERN PROVINCES

These were New York, including originally New Jersey and Delaware, and the Carolinas, Pennsylvania, and Maryland. They provided more of a melting pot of religious and national groups than any other part of America, and consequently they were generally ahead of other sections in developing religious freedom. Furthermore, we find here a semifeudal association of government with land ownership, where "proprietors were exploiters of the estates whose

prosperity depended upon the steady flow of immigration."[283] In these colonies or provinces, consequently, a practical type of liberalism prevailed in welcoming newcomers of various types, although Quakers dominated in Pennsylvania; Roman Catholics, followed by Anglicans, in Maryland; and Presbyterians and Quakers, following Anglicans, in New Jersey; while Dutch Reformed—originally the only religion "publicly admitted" in New Netherlands—and Anglicans sought the mastery in New York.[284] Here, in spite of alternating Dutch and English rule, there was more tolerance than in New England.

An early example was the attitude of the town of Flushing, Long Island, many of whose freemen, incensed by the attitude of Governor Peter Stuyvesant (1592–1672) in banning the Quakers in 1657 in spite of the provisions of their town charter of 1645, guaranteeing "the right to have and enjoy liberty of conscience," drew up the "Flushing Remonstrance." In this they proclaimed that they would not only welcome members of this sect, but any "sons of Adam who came in love among us," and would not "condemn, punish, banish, prosecute or lay violent hands upon anyone, in whatever name, form or title he might appear." It was because of the hospitality of John Bowne (1627/28–95), who invited the Quakers to worship in his home until a meeting house was available, and his success, in spite of arrest, in securing in 1663 a decision of the governing Amsterdam Chamber of the Dutch West India Company, freeing one arrested for proclaiming his religious views and declaring that "the consciences of men, at least, ought to be free," that plans were consummated for setting apart the Bowne house as "a shrine to religious freedom." This was in connection with the 300th anniversary, in 1945, of the founding of the town.[285]

According to the Articles of Capitulation of 1664, by which New Netherlands was ceded to the English, it was provided that the Dutch inhabitants be given freedom of worship.[286] The spirit of toleration was so fully accepted that at one time we find the English chaplain permitted to read the *Prayer Book* service in the old Reformed Dutch Church in the fort on Manhattan Island, after the Dutch service was finished. It is also worth recording that the instructions of King James II (1633–1701) to his appointed Governor of New York, Col. Thomas Dongan, in 1682, contain one of the most heartening official statements of religious liberty in early American history:

> You shall permit all persons of what Religion soever quietly to inhabit within your Government without giving them any disturbance or disquiet whatsoever for or by reason of their differing Opinions in matters of Religion, Provided they give no disturbance to y^e^ public peace, nor do molest or disquiet others in y^e^ free Exercise of their Religion.[287]

A few other developments in the colonial period are worth mentioning. In

1683 "The Charter of Liberties and Privileges" offered to the inhabitants of New York and its dependencies contains a clause intended to guarantee toleration to all Protestant Christians, "they behaving themselves peaceably and quietly, but not using the Liberty to licentiousness nor to the civil injury or outward disturbance of others." This proposal was not confirmed in England by the government, so the General Assembly in 1691 made it a full-fledged right by agreeing that no one should be called in question "for any Difference in Opinion on matters of conscience in Religious Concernment," but specifically providing that this does not refer to "any persons of the Romish Religion," which at the time was not tolerated in England.[288]

At about this time (1687) in a report on conditions in the colony the governor gives a more cosmopolitan picture of religious forces than could have been found in any of the other colonies of the time except Rhode Island and Pennsylvania.

> New York [he states] has first a chaplain belonging to the Fort, of the Church of England; secondly, a Dutch Calvinist; thirdly a French Calvinist; fourthly, a Dutch Lutheran. Here be not many of the Church of England; few Roman Catholics; abun dance of Quaker preachers, men, and women especially; Singing Quakers; Ranting Quakers; Sabbatarians; Anti-Sabbatarians; some Ana-baptists; some Jews; in short of all sorts of opinion there are some, and the most part none at all.[289]

We are, therefore, not surprised to find that in the middle of the eighteenth century the spirit of toleration has so developed—howbeit largely for prudential rather than for ideological or idealistic reasons—that in the advertisement regarding the opening of King's (Columbia) College in New York in 1754, reference is made to the fact that "there is no intention to impose on the scholars, the peculiar tenets of any particular sect of Christians, but to inculcate upon their tender minds, the Great Principles of Christianity and Morality, in which true Christians of each Denomination are generally agreed."[290] Similar ideals, as we shall see, prevailed at about the same time at the leading institution of learning in another one of the middle colonies—what is now the University of Pennsylvania.[291]

Conditions in New Jersey were not dissimilar to those in New York, with which it was generally associated, sharing the alternating Dutch and English supremacy. In 1677 "West Jersey" came under Penn's control, and his "Concessions and Agreements of the Proprietors, Freeholders and Inhabitants" assured religious toleration. In 1702 the rights of jurisdiction in the two provinces of East and West Jersey were transferred to the crown of England, and they were united under New York until 1738, after which date New Jersey had an independent government, with a relatively large amount of freedom of conscience

and of church independence; more than in most of New England, but somewhat less than in Pennsylvania.

Penn's efforts for religious freedom in Pennsylvania were particularly notable and are discussed elsewhere.[292] Indeed, it was only here, in Delaware—which was originally part of the province—and in Rhode Island that we find "free colonies" with liberty of conscience and without any established Church. Even in Pennsylvania religious tests, in spite of the absence of an establishment, were of a rather narrow Protestant type.[293] But for its day the attitude was relatively liberal, due mainly to Penn's "Frame of Government" of 1683, which welcomed all citizens to full rights "who profess to believe in Jesus Christ."[294] As a result, Joseph Priestley (1733–1804), writing a century later (1788), could say that "there is no place where there are more forms of religion openly professed, and without the establishment of any of them than Pennsylvania."[295] It is still the home of multitudinous sects which trace their origins back to the Protestant Reformation in Germany.

As early as October–November, 1700, the General Assembly at Newcastle, Delaware, passed an act concerning liberty of conscience, guaranteeing

> "no person now or at any time hereafter living in this province or territories who shall confess and acknowledge one Almighty God to be the creator, upholder and ruler of the world and that professeth him or herself obliged in conscience to live peaceably and quietly under the civil government, shall in any case be molested or prejudiced for his or her Christian liberty in that respect, without any interruption or reflection."

This enactment was in accord with the charter to William Penn and the Great Law of the Province of December 10, 1682.[296]

The later colony of Carolina had as its first organic law the "Declarations and Proposals" issued by the proprietors in 1663. These promised to settlers emigrating within five years both the representation of freeholders in a provincial assembly and considerable liberty of conscience for those who could not accept the Church of England. The more elaborate "Fundamental Constitutions of Carolina," drawn up in 1669 by John Locke for the Earl of Shaftesbury, provided, as will be shown in another chapter, for even larger religious freedom.[297]

The tolerant attitude of the Calverts in the proprietary colony of Maryland, and the special act tolerating all Trinitarian Christians passed by the Maryland Assembly in 1649, are dealt with in the next section, where Cecil Calvert is considered among the "Colonial Advocates of Religious Freedom."

The Quakers, the Baptists, and the Presbyterians in the various colonies took the lead in protesting against any form of ecclesiastical establishment. The Huguenots (XI, 2) were relatively few in number, but they were also highly

influential, and almost invariably strong supporters of religious freedom because of their European experience. These all favored toleration for all Protestant Christians, but the prejudice against the relatively small number of "Papists" and Jews in the various colonies was such that, although generally treated better than in the earlier colonies, they did not uniformly secure political rights until the early decades of the nineteenth century.

This brief survey—unless supplemented by the references to Penn, Calvert, and others—may give an inadequate impression of the important contribution of the proprietary colonies to religious freedom. Not only did the proprietors in their eagerness to advance the economic prosperity of territories under their control by securing more settlers, let down theological and ecclesiastical bars, but the Quaker influence centering in Pennsylvania stood in the main for freedom. Furthermore in the period from 1660 to 1775 when the proprietary colonies were being developed with such enthusiasm, the colonial population was being increased by over two million people—the increase being largely due to this new type of land-grant colony. These new settlers were generally attracted by the religious freedom offered, and were determined to continue and develop it.[298]

(4) NOTE ON PERSECUTION OF WITCHES

The persecution of witches in the territory now occupied by the United States was virtually confined to the colonial period and took place mainly in the seventeenth century. This fact and the fact that it has been dealt with in a most scholarly way by the late Professor G. L. Kittredge of Harvard in his *Witchcraft in Old England and New England,* and by others, make it unnecessary for us to give it more than passing attention. Witchcraft, conceived particularly as the malevolent influence of certain old women possessed by evil spirits, has been in one form or another a favorite delusion of people under certain conditions, and became the basis of much religious persecution in the fourteenth century. But it is extraordinary to think that it survived the Renaissance, the Reformation, and the Counter-Reformation, and that belief in it, which had resulted in its receiving much attention from the Inquisition, was clearly recognized by the Catholic Church through the bull of Pope Innocent VIII in 1484. It was in no sense of the word a New England or even an American delusion. It was brought over by colonists both from the continent and England in the seventeenth century, the first trial being in Boston in 1648. The hysteria reached its climax, as is well known, in Salem Village (now Danvers), Massachusetts, in 1691–92, when the peculiar actions of certain young women and girls—"afflicted children"—were thought to be due to the influence of witches, and as a result of the

agitation several hundred persons were arrested and tried by a civil court, nineteen of them being hanged. Their killing was justified at the time on many grounds, including public safety, and by some of the early Old Testament references to the fact that witches or wizards should not be allowed to live.[299]

Fortunately, however, in spite of the common impression, no one of the alleged witches was burned at Salem. In this case, the most notorious in American history, the judge who presided at the trial later confessed his error, and the twelve jurymen signed a statement admitting theirs and asking for forgiveness.

It should be remembered that the witchcraft delusion appeared in other colonies. For instance, in Connecticut a law of 1642 provided that "If any man or woman be a witch (that is) hath or consulted with a familiar spirit, they shall be put to death."[300] There were two or three cases considered under this law, but no sure case of conviction. Even the enlightened William Penn presided over the trial of two women for witchcraft, and as late as 1718, when the issue was no longer acute, Pennsylvania incorporated in its own legislation a series of English laws against the delusion. South Carolina had done the same six years earlier. There were isolated instances of persecution for witchcraft in Virginia in 1706, in North Carolina in 1712, and in one or two other places.

Witchcraft was an amazing form of superstition and prejudice which cast discredit upon all who accepted it; but in any study of religious freedom in the United States it should be remembered that it was not so common in this country as in Europe, where tens of thousands of persons were killed as witches in the sixteenth and seventeenth centuries, including England under the Commonwealth, and that in Salem, where it had appeared in its most violent form, the delusion soon virtually disappeared, and all felt ashamed to remember it. To be sure, there have been one or two cases as late as 1928 when witchcraft opinions were found to exist in backward country sections both of Virginia and Pennsylvania, resulting in crimes, but these were in no way typical, and the persons involved were given fair trials.[301]

The witchcraft delusion was not a case of conflict between Church and State. Generally when it existed both powers felt that it was an evidence of satanic influence and agreed that it should be dealt with summarily, and both united in its ultimate overthrow. The turning point in public opinion in America took place in 1696 and 1697. The General Court of Massachusetts, December 17, 1696, passed a resolution confessing error in the decision of the Salem trial; and in the following month Judge Samuel Sewall (1652–1730), who had presided at the trial, the memory of which had long haunted him, stood in his pew in the Old South Church, Boston, while his pastor read the "bill" the judge had pre-

pared confessing to "blame and shame" for his part in the conviction, and asking pardon. As a sign of his repentance he spent one day every year thereafter in fasting, meditation, and prayer, that he might continue mindful of the enormity of his earlier offense.[302]

Section 3. THE COLONIAL ADVOCATES OF RELIGIOUS FREEDOM AND THEIR WORK

During most of the colonial period nearly all the American colonies had some church with a more or less definite State connection, and dissenters, generally speaking, suffered both difficulties and disabilities. Ecclesiastical conformity was the normal pattern—in most cases Congregational or Anglican—nonconformity being relatively rare outside proprietary colonies though increasing as the Revolution approached. Leaders of the various colonies were inclined to take for granted that a State-Church was legitimate, if not also necessary to maintain religion and morality. Even persecution, not only by individuals but by the State, long survived, as it did in Europe. As a result, the battle for religious liberty was protracted and bitter, and those who advanced the cause should be held in lasting honor.

In the century and a half between the earliest permanent settlement of what is now the United States and the Revolution seven persons stand out as worthy of special consideration for their contributions to religious liberty. These were:

Anne Hutchinson (1591–1643), Congregationalist
Thomas Hooker (1566–1647), Congregationalist
Cecil Calvert, Lord Baltimore (*c.* 1605–75), Roman Catholic
Roger Williams (*c.* 1603–82/83), Independent, Baptist, Seeker
John Clarke (1609–76), Baptist
William Penn (1644–1718), Quaker
Samuel Davies (1724–61), Presbyterian

It is interesting to note that of these, two are generally classed as Congregationalists and two as Baptists, and one each as a Quaker, a Roman Catholic, and a Presbyterian. No Anglican is included. Furthermore, four were ministers of religion, and three were laymen—one a woman.

It was originally planned also to discuss here the contributions of the late eighteenth-century leaders of the same cause, but shortly before publication it seemed better for various reasons, in spite of some slight overlapping, to differentiate between the two chronological groups, and to remove the leaders of religious freedom and Church-State separation in the periods of the Revolution and of the founding of our government to the next chapter.[303] But it is neces-

sary to study the two lists as a whole to secure a clear picture of the personal factors which brought about the provisions of our Federal and state constitutions. Ruffini, in considering slower but similar developments in Western Europe, states that the "first impulse towards ideas of religious toleration" came in England from philosophers, in France from littérateurs, in Germany from jurists (especially the advocates of natural law), and in Italy from ecclesiastics. There is some truth in each of these statements. If we were to complete his analogy we might, with equal justice, say that in the United States the early impulses toward religious freedom came mainly from two groups: nonconformist ministers, especially Baptists; and, somewhat later, during the period of the formation of our government, from statesmen. It is impressive that it was the representatives of Church and State that brought about the mutual understanding and working agreement between the two which we have in the United States, while abroad the understanding came mainly from outside. It is equally striking that neither a philosopher—unless Jefferson be so called—nor a great jurist, nor a distinguished man of letters, nor any ecclesiastic other than the liberal-minded John Carroll made any notable contribution to the solution of the Church-State problem in this country.

We shall begin with two persons who could hardly be classed as coming strictly within the category of leaders of religious freedom, but who because of their courage in upholding independent views deserve our recognition. They differed greatly from each other—the one a sharp-tongued, aggressive woman who stood up courageously for her rather extreme theological views against the powers both of Church and State; the other a fair-minded, moderate man who believed in quietly going about the task of building up a more democratic Church and State: Anne Hutchinson and Thomas Hooker. Roger Williams, their contemporary, whose fame rightly exceeds theirs, will be dealt with somewhat later.

(1) ANNE HUTCHINSON AND THOMAS HOOKER, CONGREGATIONALISTS

(a) *Anne Hutchinson, 1591–1643.* When working on the list of American heroes of religious freedom and of a democratic-republican form of government I did not originally include Anne Hutchinson. This was because I thought of Hutchinsonianism or Antinomianism as primarily a theological dispute. I had not fully realized its significance from the standpoint of religious liberty and Church–State relations. It seems clear, however, that Anne Hutchinson deserves to be included as an example of early independence in courageously upholding views opposed by the State as well as by the Church of her time, and because she made an important contribution to the cause of freedom. Indeed, the so-

called Antinomian controversy, of which she was the leading figure, reflects more accurately than any other incident the fundamental character of Church-State relations in Massachusetts, which remained almost unchanged until after the Revolution.

The actual trial of Roger Williams by the General Court of Massachusetts took place in 1635, when he was ordered banished for heresy, and was forced to leave the colony the following spring. Williams' preliminary skirmish with the authorities therefore antedated Anne Hutchinson's trial by the same court two years later. But the most important and constructive contribution to the cause of religious liberty of the founder of Rhode Island took place after his friend Anne's death, so we are letting her name stand first on the list.

The word which designates historically the incident of which she was the center comes from the Greek words *ἀντί* and *νόμος*, meaning, of course, "against the law." It was a word coined by adversaries, and with a history going back to the extremes of belief and action characteristic of some small Anabaptist and other Protestant sects in the Reformation period. It raised the fear of repetition of some of the vagaries of John of Leyden (*c.* 1509–36), "prophet" and self-designated "King" of Münster, Westphalia, under whose theocratic administration, after his overthrow of the regular government, polygamy, community of property, and lawlessness were all too common, until his "kingdom" was overturned in 1535 with a resulting massacre. The knowledge of this incident and its effects was still a bogy to conservative people. They wanted no "mingle-mangle of religion" in New England, and the very name "Antinomianism," which Anne and her colleagues repudiated, as they were honorable, high-minded people, had terror in it, even more than Bolshevism had in the United States in the decade after World War I.

The general idea of the opponents of Anne Hutchinson and her group was that Antinomianism was an immoral doctrine which superseded the need of good works and held that a believer whose heart was right toward God was fulfilling the law irrespective of his conduct. It was because of this that John Wheelwright (1592–1679) in his famous fast-day sermon of 1637, for which he was banished, said that they should bear themselves so that "we give not others to say we are libertines or Antinomians."[304]

The earliest and latest historians of distinction who have dealt with this amazing and complicated early New England case have recognized its Church-State connections. For example, Charles Francis Adams, writing in 1894 on *Antinomianism in the Colony of Massachusetts Bay, 1636–38*, a controversy which centered in the trial, excommunication from the Church, and banishment from the commonwealth of Anne Hutchinson for her heretical views, says:

As the twig is bent the tree inclines. Massachusetts was at the period of the Antinomian controversy in "the twig,"—not yet past the years of human infancy; and it is no exaggeration to say that the outcome of the controversy influenced the course of Massachusetts development both perceptibly and gravely through more than a century and a half. In point of fact, we can now see that in 1636 the nascent community came to a place where the roads forked. The issue between religious toleration and a compelled theological conformity was, as a matter of established policy, then to be decided. It was decided. And the decision reached was final so far as colonial and provincial Massachusetts was concerned. In other words, it held through the lives of five generations.

. . . The decision [between Roger Williams and Sir Harry Vane who "represented the ideas of extreme civil liberty and religious tolerance" and the intolerant element in Church and State] . . . took shape in the outcome of the Antinomian controversy. . . . For good or evil, it committed Massachusetts to a policy of strict religious conformity . . . not seriously shaken until 1819 . . . [rise of Unitarianism].[305]

Similarly, James Truslow Adams, writing over a generation later (1932), speaking of the meetings at Anne Hutchinson's house in 1635, says:

She then ventured to expound her own religious beliefs and advocated the preaching of a "covenant of grace"—a religion based upon the individual's direct intuition of God's grace and love—as opposed to the preaching of a "covenant of works"—a religion based upon obedience to the laws of church and state.[306]

Mistress Hutchinson was born in England in a family of education and ability. She sympathized with the Puritan movement, and gained much from the preaching of the Reverend John Cotton (1584–1652), vicar of St. Botolph's in old Boston. As most ministers of religion, with their ultraconventional and conservative ways, did not appeal to her, she decided to follow Cotton, who migrated to New England in 1633, the same year in which her brother-in-law, John Wheelwright, later to play a prominent part in her life, was silenced for his Puritan tendencies. Later, in 1634, with her husband and large family, she reached Boston. Here she won many friends, and became the early leader of a significant controversy between the forces of freedom and those of authority. Indeed, her wiser friend, Roger Williams, alone precedes her in time—he was banished from Massachusetts in 1635—and in significance among the early American supporters of freedom of speech and of religion.

There seems to be little doubt of the main facts about her character and career in America. They may be briefly recorded before we give special consideration to the Church-State and religious-freedom incidents involved. Mistress Hutchinson was a woman of exceptional force and independence, tending to egotism, who inherited a tendency to a more liberal outlook than was customary in New England. She had an able mind, strong convictions, and a fearless disposition.

She was fond of disputation, but also had a mystical side to her nature, laying much emphasis on the "indwelling" of the Holy Spirit.

She was the mother of thirteen children, her devoted husband being a respected but rather colorless personality without any of her magnetism. She was a woman of great kindness of heart to people in trouble, her services to the sick poor being much appreciated, especially at times of childbirth. She was also sought after for personal counsel and advice. This involved dangers, since it led her, because of what Governor Winthrop called her "ready wit and bold tongue," to say things open to comment and criticism in a town where there was as much gossiping as there was in the little Boston community three hundred years ago. There disagreement on any point with the official teachings of Church or State was likely to lead to trouble.

Mrs. Hutchinson was a devoted admirer of the Reverend John Cotton, the teacher of the Church, but his colleague, the Reverend John Wilson, the pastor, preached what she called the covenant of works instead of the covenant of grace; and he did not like it because she criticized him and other ministers of the colony for what she believed to be their lack of "direct" divine inspiration and spirituality. To her, religion was a very personal thing; and she believed that one who felt that a belief or course of conduct was indicated as God's will was bound to follow the dictates of mind and conscience.

She started what has frequently been called the first woman's club in America, a Monday evening gathering of women at her house. This became the most popular thing in Boston, where her social standing as a "gentlewoman" was excellent. Sixty to eighty attended, and the women—contrary to New England prayer-meeting custom at the time—took part. Then a second conference, which was attended also by men, was added. Henry Vane the younger (1613–62), Governor of Massachusetts 1636–37, a liberal with a firm belief in freedom of conscience, was among those who attended the meetings, which had wide popular support outside of the clergy. Edward Johnson (1599?–1672), author of *Wonder-Working Providence* (1654), wrote:

> Come along with me and I'll bring you to a woman that preaches better Gospell than any of your black-coats that have been at the Ninnyversity, a woman of another kind of spirit, who hath had many revelations of things to come, and for my part, I had rather hear such a one that speaks from the meere motion of the spirit, without any study at all, than any of your learned Scollers, although they may be fuller of the Scripture.[807]

Originally these conferences were for giving a review of the sermon of the previous Sunday; but they increasingly took on a somewhat controversial character and dealt with disputed theological matters, and even occasionally touched on what might be called today public questions.

In his *A Short Story* (written in 1638 and published in 1644) Governor Winthrop gives this contemporary account of Mistress Hutchinson's weekday lectures and what he considered to be their bad effect:

> But the last and worst of all, which most suddainly diffused the venome of these opinions into the very veines and vitalls of the People in the Country, was Mistris Hutchinsons double weekely-lecture, which she kept under a pretence of repeating Sermons, to which resorted sundry of Boston, and other Townes about, to the number of fifty, sixty, or eighty at once; where, after she had repeated the Sermon, she would make her comment upon it, vent her mischievous opinions as she pleased, and wreathed the Scriptures to her owne purpose; where the custome was for her Scholars to propound questions, and she (gravely sitting in the chaire) did make answers thereunto. The great respect she had at first in the hearts of all, and her profitable and sober carriage of matters, for a time, made this her practise lesse suspected by the godly Magistrates, and Elders of the Church there, so that it was winked at, for a time, (though afterward reproved by the Assembly and called into Court) but it held so long untill she had spread her leavin so farre, that had not providence prevented, it had proved the Canker of our Peace, and ruine of our comforts.
>
> By all these meanes and cunning sleights they used, it came about that those errors were so soone conveyed, before we were aware, not onely into the Church of Boston, where most of these seducers lived, but also into almost all the parts of the Country, round about.[308]

The governor stated his belief that Mistress Hutchinson and her group were throwing contempt upon churches, courts, and magistrates, interrupting the civil peace, beginning to raise sedition, and "indangering the Common-wealth." There resulted five meetings to safeguard the interests of Church and State.[309]

First, a conference between Anne Hutchinson and the ministers whom she criticized, in Cotton's house in December, 1636. The governor, Henry Vane, and most of the magistrates were also present, and Pastor Wilson was chosen secretary.

Second, a church conference or synod, which was the earliest of its kind in New England. It was held in New Towne (Cambridge), August 30, 1637, being attended by twenty-three Massachusetts ministers and two from Connecticut. The session lasted three weeks, "the Magistrates sitting present all that time, as hearers and speakers also when they saw fit."[310] This resulted in her rebuke and the denunciation of her heresies.

Third, a meeting of the General Court at New Towne, October 2, 1637, at which Mistress Hutchinson, her friend, clerical supporter, and brother-in-law, the Reverend John Wheelwright, "and other erroneous and seditious persons" were tried and found guilty "for their disturbances of the publick peace."[311]

Fourth, a meeting of the General Court in November, 1637, lasting nearly all

the month, at which the colonial authorities supported the decision of the ministers and ordered Mistress Hutchinson's banishment. She was sent to Roxbury for private confinement so that she would not have to travel far during the rigors of winter. At Roxbury she was visited by many of the ministers, who tried to turn her from her errors.

Fifth, two meetings of her church in March, 1638, at which, after admonition, she was tried for ecclesiastical discipline and excommunicated. It is significant that the church now contains a mural tablet in her honor, although the author of *A briefe Apologie,* almost surely Winthrop, referring to her excommunication, called her "this great imposter, an instrument of Satan";[312] while her pastor used these amazing words in addressing her at the close of the proceedings:

Forasmuch as yow, Mrs. Huchison, have highly transgressed & offended, & forasmuch as yow have soe many ways *troubled the Church with yo*r *Erors* & have drawen away many a poor soule, & have *upheld yo*r *Revelations:* & forasmuch as *yow have made a Lye,* &c. Therfo[r] in the name of our Lord Je: Ch: & in the name of the Church I doe not only pronownce yow worthy to be cast owt, but I *doe cast yow out* & in the name of Ch. I *doe deliver you up to Sathan,* that yow may learne no more to blaspheme, to seduce & to lye, & I doe account yow from this time forth to be a Hethen & a Publican & soe to be held of all the Bretheren & Sisters, of this Congregation, & of others: therefo[r] I *command yow* in the name of Ch: Je: & of this Church *as a Leper to withdraw yo*r *selfe owt of the Congregation;* that as formerly yow have dispised & contemned the Holy Ordinances of God, & turned yo[r] Backe one them, soe yow may now have no part in them nor benefit by them.[313]

John Cotton, although condemning her extreme views, spoke well of her kindness, her character, and her abilities. The criticism of her by all the ministers dealt with all sorts of theological matters involving the resurrection, eternal life, the nature of the soul, the obligation of the law as distinct from the gospel as "a Rule of Life," the relative importance of grace and works, and particularly her claim "That her Revelations about future Events are to be beleeved as well as Scripture because the same holy Ghost did indite both."[314]

As a result of her trial and excommunication she fled with most of her children to Aquidneck in Rhode Island, where she was preceded by her husband. Here she took an active part in civil and religious affairs, always on the side of liberalism. Later she went to New York, where she and most of her children were murdered by the Indians in 1642. The Hutchinson Parkway, near New Rochelle, keeps her name before the public.

It remains for us to go through Winthrop's *A Short Story* and other contemporary writings, and quote certain passages and incidents that have special bearing on the subject of these volumes.

We note that at the New Towne (Cambridge) synod, at which the magistrates

were "sitting present," some eighty-two erroneous opinions were condemned. These are of a theological and ecclesiastical character, and it is not necessary to take them up in detail. They are spread out at length in Winthrop's account with the "confutation" in each case. They mostly have to do with the question of the "covenant of grace," which Anne Hutchinson and her group proclaimed as against the "covenant of works," and with direct divine inspiration, what Winthrop, in disapproval, calls a "voyce unto the Soule."[315] Occasionally the position of the minister as such, and that of church members is up for discussion; matters of importance to the State when, as in New England, there was an establishment. For instance:

Errour 53. No Minister can teach one that is anoynted by the Spirit of Christ, more than hee knowes already unlesse it be in some circumstances.[316]

Errour 65. The Church in admitting members is not to looke to holinesse of life, or Testimony of the same.[317]

Errour 71. The immediate revelation of my good estate, without any respect to the Scriptures, is as cleare to me, as the voyce of God from Heaven to *Paul*.[318]

Errour 74. All verball Covenants, or Covenants expressed in words, as Church Couenants, vowes, &c. are Covenants of workes, and such as strike men off from Christ.[319]

Errour 79. If a member of a Church be unsatisfied with any thing in the Church, if he expresse his offence, whether he hath used all meanes to convince the Church or no, he may depart.[320]

Errour 82. A Minister must not pray nor preach against any errour, unlesse he declare in the open Congregation, upon any members enquiry, the names of them that hold them.[321]

It is easy to read between the lines the underlying differences between Anne Hutchinson and her supporters (including to some extent the Reverend John Cotton) on the one hand, and on the other the leaders of the orthodox views as represented by her pastor, the Reverend John Wilson, and by Governor Winthrop.

The real significance of this trial, with its "Confutation of Errours," lay, from the point of view of these volumes, in the fact that the magistrates were present and taking such part as they wished, and that the governor of the colony thought it a matter of importance to write a complete account evidencing in every line his disapproval of Mistress Hutchinson, whose views were the major subject of controversy.

This active interest on the part of the State in the Hutchinson case is also brought out by John Cotton (1584–1642). In his *The Way of Congregational Churches Cleared,* which appeared in London in 1648, he shows the connection

of the magistrates of the colony with the synod, which he says was gathered with their consent.

Whatever assistance the civill Government gave to the purging and healing of these evils, it was the fruit of Independent Church Government. . . . Whereat the Magistrates being present, they saw just cause to procced aginst the chief of those whom they conceived to have bred any civill disturbance: and the Churches saw cause to proceede against their Members, whom they found to bee broachers or maintainers of such heresies.[322]

The logic here is not altogether clear. In spite of the statements of the colonial authorities, they were apparently deeply interested in combating heresy, although doubtless they justified their opposition by their fear of the dangerous influence of unorthodox views on civic unity and order.

We turn now to the first meeting of the General Court at New Towne, October 2, 1637, when Mr. Wheelwright was condemned. This was held because, in spite of the action of the synod, the difference between Wheelwright, Mistress Hutchinson, and the other leaders "in those erroneous wayes," and the official attitude of Church and State

was still as wide as before, *viz.* as great as between heaven and hell: Mr. *Wheelwright* also continued his preaching after his former manner, and Mistris *Hutchison* her wonted meetings and exercises, and much offence was still given by her, and others in going out of the ordinary assemblies, when Mr. *Wil.* [Rev. John Wilson, the pastor] began any exercise. . . .[323]

As a result, the magistrates and others decided that the case was so desperate that it was necessary "to suppresse them [that is the ringleaders named] by the civill authority."[324] They thought they saw a good chance to do this by making use of *A Remonstrance or Petition,* intended to secure the withdrawal of Wheelwright's censure by the General Court. The petition showed that nothing he said was of itself seditious and that it was not seditious in its results. The petitioners felt that the court should either show clearly wherein there was sedition or else acquit Brother Wheelwright. They had the boldness to use one phrase which was of special significance and caused great offense: they asked the court "to consider the danger of medling against the Prophets of God."[325] Winthrop's point of view was very different. In the letter he wrote to the signers of the petition he shows clearly that his feeling against Wheelwright, Anne Hutchinson, and their associates was due largely to his belief that they dared to be in opposition to the authorities of the State. He complains because

you invite the body of the people to join with you in your seditious attempt against the court and the authority here established, against the rule of the apostle, who requires

every soul to be subject to the higher powers, and every Christian man to study to be quiet and to meddle with his own business.[326]

These contrasting statements are exceptionally significant and illuminating from the standpoint of Church–State theory.

The session resulted in the adoption of a "Declaration" that those who had been active in signing this petition should deliver up their arms, unless they acknowledged the evil of their course before two magistrates, and that Mrs. Hutchinson should be arrested and summoned "for traducing the ministers and their ministry," and that any expense in connection with her custody should be borne by her husband. The order, as adopted in November, 1637, begins with this statement:

Whereas the opinions & revelations of Mr. Wheelwright & Mrs. Hutchinson have seduced, & led into dangerous errors, many of the people heare in Newe England, insomuch as there is just cause of suspition, that they, as others in Germany, in former times, may, upon some revelation, make some suddaine irruption upon those that differ from them in judgment: for prevention whereof, it is ordered, that all those, whose names are underwritten, shall, (upon warning given or left at their dwelling houses.) before the 30th day of this month of November, deliver in at Mr. Cane's house at Boston all such guns, pistols, swords, powder, shot, & match as they shalbee owners of, or have in their custody, upon paine of ten pound for evry default to bee made thereof. . . .[327]

When Mr. Wheelwright appeared he denied that he had committed sedition or contempt, and asserted that he had "delivered nothing but the truth of Christ." The court replied that it had not

censured his doctrine but left it as it was; but his application, by which hee laid the Magistrates, and the Ministers, and most of the people of God in these Churches, under a Covenant of works, and thereupon declared them to bee enemies to Christ, and Antichrists, and such enemies as *Herod* and *Pilate,* and the Scribes and Pharisees, &c. . . .[328]

This showed the true animus of the proceedings against Wheelwright and Mrs. Hutchinson. It was not so much that they held theological errors, as that they dared to say anything which could be implied as a criticism of the State authorities. The court decided that Wheelwright was to be disfranchised, banished, and also put in custody unless he could give security to depart before the end of March.[329] He thereupon said that he would appeal to the king, but this was denied by the court, which announced that it had final authority "to heare and determine all causes without any reservation."[330]

The other signers were called one after the other, and were given similar treatment, except in one or two cases where they acknowledged their fault. The

court then took up the case of Mistress Hutchinson, who Winthrop states was "the head of all this faction" and "the breeder and nourisher of all these distempers." Part of Winthrop's account dealing with her case, and showing clearly the animus of the colonial authorities, must be reproduced:

All these (except Mr. *Wheelwright*) were but young branches, sprung out of an old root, the Court had now to do with the head of all this faction, (*Dux foemina facti*[331]) a woman had been the breeder and nourisher of all these distempers, one Mistris *Hutchison,* the wife of Mr. *William Hutchison* of *Boston* (a very honest and peaceable man of good estate) and the daughter of Mr. *Marbury,* sometimes a Preacher in *Lincolnshire,* after of *London,* a woman of a haughty and fierce carriage, of a nimble wit and active spirit, and a very voluble tongue, more bold than a man, though in understanding and judgement, inferiour to many women. This woman had learned her skil in *England,* and had discovered some of her opinions in the Ship, as shee came over, which had caused some jealousie of her, which gave occasion of some delay of her admission, when shee first desired fellowship with the Church of *Boston,* but she cunningly dissembled and coloured her opinions, as shee soon got over that block, and was admitted into the Church, then shee began to go to work, and being a woman very helpfull in the times of child-birth, and other occasions of bodily infirmities, and well furnished with means for those purposes, shee easily insinuated her selfe into the affections of many, and the rather, because shee was much inquisitive of them about their spiritual estates, and in discovering to them the danger they were in, by trusting to common gifts and graces, without any such witnesse of the Spirit, as the Scripture holds out for a full evidence; whereby many were convinced that they had gone on in a Covenant of works, and were much humbled thereby, and brought to inquire more after the Lord Jesus Christ, without whom all their gifts and graces, all their contributions, &c. would prove but legall, and would vanish: all this was well, and suited with the publick Ministery, which went along in the same way, and all the faithful imbraced it, and blessed God for the good successe that appeared from this discovery. But when shee had thus prepared the way by such wholesome truths, then shee begins to set forth her own stuffe, and taught that no sanctification was any evidence of a good estate, except their justification were first cleared up to them by the immediate witnesse of the Spirit, and that to see any work of grace, (either faith or repentance, &c.) before this immediate witnesse, was a Covenant of works: whereupon many good soules, that had been of long approved godlinesse, were brought to renounce all the work of grace in them, and to wait for this immediate revelation: . . . and indeed it was a wonder upon what a sudden the whole Church of *Boston* (some few excepted) were become her new converts, and infected with her opinions, and many also out of the Church, and of other Churches also, yea, many prophane persons became of her opinion, for it was a very easie, and acceptable way to heaven, to see nothing, to have nothing, but waite for Christ to do all; so that after shee had thus prevailed, and had drawn some of eminent place and parts to her party (whereof some profited so well, as in a few moneths they outwent their teacher) then shee kept open house for all

commers, and set up two Lecture dayes in the week, when they usually met at her house, threescore or fourescore persons, the pretence was to repeate Sermons, but when that was done, shee would comment upon the Doctrines, and interpret all passages at her pleasure, and expound dark places of Scripture, so as whatsoever the Letter held forth (for this was one of her tenents, that the whole Scripture in the Letter of it held forth nothing but a Covenant of works) shee would bee sure to make it serve her turn, for the confirming of her maine principles, whereof this was another. . . .[332]

When Mrs. Hutchinson appeared before the court she was thus addressed:

You are called hither as one of those who have had a great share in the causes of our publick disturbances, partly by those erroneous opinions which you have broached and divulged amongst us, and maintaining them, partly by countenancing and incouraging such as have sowed seditions amongst us, partly by casting reproach upon the faithfull Ministers of this Countrey, and upon their Ministery, and so weakning their hands in the work of the Lord, and raising prejudice against them, in the hearts of their people, and partly by maintaining weekly and publick meetings in your house, to the offence of all the Countrey, and the detriment of many families, and still upholding the same, since such meetings were clearely condemned in the late generall Assembly.

Now the end of your sending for, is, that either upon sight of your errors, and other offences, you may bee brought to acknowledge, and reforme the same, or otherwise that wee may take such course with you as you may trouble us no further.[333]

Then followed this dialogue:

Mistris *Hutchison.* I am called here to answer to such things as are laid to my charge, name one of them.

Court Have you countenanced, or will you justifie [34] those seditious practices which have been censured here in this Court?

Hutch. Do you ask mee upon point of conscience?

Court No, your conscience you may keep to your self, but if in this cause you shall countenance and incourage those that thus transgresse the Law, you must bee called in question for it, and that is not for your conscience, but for your practise.

Hutch. What Law have they transgressed? the Law of God?

Court Yes, the fifth Commandement, which commands us to honour Father and Mother, which includes all in authority, but these seditious practices of theirs, have cast reproach and dishonour upon the Fathers of the Commonwealth.[334]

There followed similar exchanges of this character, in which great emphasis was placed upon her holding set meetings at which she tried to teach persons older than herself. A few passages are particularly interesting as showing Mrs. Hutchinson's convictions that she had the right to speak and act as her conscience dictated, such as her saying "If God give mee a gift of Prophecy, I may use it."[335] She upheld the theory that the "feare of man was a snare."[336] She was outspoken in maintaining her opinions, and, according to Winthrop, warned

them to take heed how they proceeded against her lest "God will ruine you and your posterity, and this whole State."[337]

Winthrop states that her appearance before the court showed "that her opinions and practices have been the cause of all our disturbances, & that she walked by such a rule as cannot stand with the peace of any State. . . ."[338] The court now realized "where the fountaine was of all our distempers," and did not wish the Anabaptist excesses of Münster to be repeated. So they felt the "inevitable necessity to rid her away," and pronounced the sentence of banishment against her. She was "committed to the Marshall, till the Court should dispose of her."[339]

In summing up the causes of Anne Hutchinson's downfall Winthrop shows clearly the part played by the State in what was originally a Church controversy.

This *American Jesabel* kept her strength and reputation, even among the people of God, till the hand of Civill Justice laid hold on her, and then shee began evidently to decline, and the faithfull to bee freed from her forgeries; and now in this last act, when shee might have expected (as most likely shee did) by her seeming repentance of her errors, and confessing her undervaluing of the Ordinances of Magistracy and Ministracy, to have redeemed her reputation in point of sincerity, and yet have made good all her former work, and kept open a back doore to have returned to her vomit again, by her paraphrasticall retractions, and denying any change in her judgement, yet such was the presence and blessing of God in his own Ordinance, that this subtilty of Satan was discovered to her utter shame and confusion, and to the setting at liberty of many godly hearts, that had been captivated by her to that day. . . .[340]

We also find in the preface to the *Short Story* evidence of Winthrop's indignation that a member of the Established Church of Massachusetts Bay, and a woman at that, should have the audacity to oppose the magistrates.

Another of them [he wrote] you might have seene so audaciously insolent, and high-flowne in spirit and speech, that she bade the Court of Magistrates (when they were about to censure her for her pernicious carriages) Take heed what they did to her, for she knew by an infallible revelation, that for this act which they were about to passe against her, God would ruine them, their Posterity, and that whole Commonwealth.[341]

The same point of view is brought out in a contemporary account of the closing scene of the court trial at New Towne. It is in the form of a colloquy between Governor Winthrop and the accused.

Gov. Mrs. Hutchinson, the sentence of the court you hear is that you are banished from out of our jurisdiction as being a woman not fit for our society, and are to be imprisoned till the court shall send you away.

Mrs. H. I desire to know wherefore I am banished?

Gov. Say no more, the court knows wherefore and is satisfied.[342]

An exclamation mark should really be placed after this statement to indicate the governor's haughty and intolerant spirit.

The Reverend Hugh Peters (1599–1635), the minister of Salem, was moved to give a summary, which it would be hard to improve upon, of the reasons which led Anne Hutchinson into such serious trouble. Addressing her at the close of the Church trial, he said:

> I would commend this to yo[r] Consideration that yow have stept owt of yo[r] place, *yow have rather bine a Husband than a Wife, & a preacher than a Hearer; & a Magistrate than a Subject,* & soe yow have thought to carry all Thinges in Church & Commonwealth, as yow would, & have not bine humbled for this.[343]

In other words, she was a brave and independent spirit who taught what she conscientiously believed to be God's word to her, and felt that she had the right so to do; a right which, independent of her conclusions, we think justified in and of itself and because she was living a pure, unselfish, Christian life. For this reason, and in spite of some extremes of statement and action characteristic of reformers, we honor her here at the head of the list of Americans who courageously upheld the ideal of religious freedom a century and a half before it was embedded in our national law.

It is worthy of record in a work devoted to the cause of religious freedom that one of Anne Hutchinson's strongest supporters, and one who accompanied her when she was expelled from the Boston church, was another woman, Mary Dyer (d. 1660), of equally intrepid spirit. She was a victim of the persecution of the Quakers. She removed to Rhode Island because of its reputation for tolerance. Even here her views and acts, and those of her associates, were so extreme that the authorities held them in disfavor, but reported to Massachusetts that "we have no law among us whereby to punish any for only declaring by words their minds and understandings concerning the things and ways of God. . . ."[344] But Mary Dyer was of the martyr type, and when Massachusetts in 1658 passed a law (by a majority of one vote) that any Quaker returning to the colony would be punished by death, she decided to "face the music." She was duly arrested, tried, and hanged on Boston Common June 1, 1660. To the offer of Rhode Island to give her freedom if she would return there—an offer which Massachusetts was willing to have her accept—she replied: "Nay, I cannot, for in obedience to the will of the Lord God I came, and in him will I abide faithful to the death."[345] It is touching to be told that one of the reasons for her Boston imprisonment was that she insisted on visiting other Quakers in prison.

(b) *Thomas Hooker, 1586–1647.* Hooker was born in Lincolnshire in 1586, studied theology at Cambridge, where he became a fellow of Emmanuel College, and in 1630 was silenced by Archbishop Laud for nonconformity, although

his opposition to the Church of England of his time had to do with ceremonies rather than doctrine. Because of persecution he fled to Holland, and in 1633 to New England. He was chosen pastor of the church formed in New Towne, now Cambridge, Massachusetts. Three years later—probably because he wished to secure more independence and freedom to work out a more democratic type of government—he migrated to Connecticut with practically all of his congregation, including John Haynes, his leading layman, afterward governor of the colony. They founded the town of Hartford. Here, under Hooker's leadership, important and relatively liberal ideas of government were developed that were to influence Church and State.

The contemporary feeling about his views and his divergence from the conservative standards of Massachusetts may be seen by a letter written to him by Governor John Winthrop (1588–1649) at a time when Hooker was organizing the commonwealth of Connecticut with its democratic tendencies. "I expostulated [Winthrop wrote] about the unwarrantableness & unsafeness of referring all matter of counsel or judicature to the body of the people, *quia* the best is always the least, & of that best part the wiser part is always the lesser."[346] He emphasized the pure Congregational principle, being even opposed to all Presbyterian tendencies which might weaken the independence of the local church.

In his address before the General Court of Connecticut in 1638, Hooker took the advanced democratic position that "The choice of public magistrates belongs unto the people, by God's allowance"; that this choice must be "according to the blessed will and law of God"; and that "They who have power to appoint officers and magistrates, it is in their power, also, to set the bounds and limitations of the power and place unto which they call them."[347] In perhaps his most important published work, the *Survey of the Summe of Church Discipline* (1648), he took the ground—vital for ultimate religious freedom in America—that the consent of the governed was the only permissible foundation of authority both in Church and State. It is possible that these views and other liberal tendencies were derived in part from Roger Williams.

Hooker's Church and State ideas, embodied in 1639 in the "Fundamental Orders of Connecticut"—considered by some the first written democratic constitution of the modern world—were the clearest expression up to that time by any government of the principle of democratic responsibility later embodied in the American Constitution. Consequently they have an important bearing on the history of religious freedom. His views of the independence of the individual church—the basic principle of Congregationalism—as outlined in 1645, contained the statement that "Each Congregation compleatly constituted of all Officers, hath sufficient power in her self, to exercise the power of the keyes, and all Church discipline, in all the censures thereof."[348] Furthermore, it was his idea

that the self-governing power of a local Congregational church should be transferred to the realm of political government. This was highly significant, and was destined to have much broader influence than Hooker ever dreamed of.

The exact reasons for his leaving Massachusetts in 1634 with the band of colonists who moved to Hartford have never been adequately explained, but it is clear that one of them was his lack of sympathy with the extreme theocratic ideal prevailing in the older commonwealth, and his desire to have Church and State more democratically organized. He had publicly criticized the limitation of the suffrage to members of the dominant Church, wishing it extended to all Christians, and in Connecticut he saw to it that there was no general religious requirement set by the central government. This and other qualifications were left to the several towns.

The fact that Hooker and his associates were establishing a new colony, and that, though fundamentally sympathetic with most of the Puritan tradition of Massachusetts, they realized its extremes, undoubtedly helped to create the more liberal point of view of the Connecticut colony at Hartford. It was more like that of Plymouth than that of Massachusetts Bay.

The New Haven colony was much less advanced in matters of religious freedom than that at Hartford, but Hooker's influence was potent after the union of the two colonies in 1662. The charter then granted by Charles II was relatively liberal, creating the colony "One Body Corporate and politique, in Fact and Name," under their own governor, deputy governor, and twelve assistants "to be from time to Time constituted, elected and chosen out of the Freemen of the said Company," as well as a duly elected General Assembly of large powers in the framing of laws, statutes, etc., "not Contrary to the Laws of this Realm of England," and providing that all new colonists arriving should "enjoy all Liberties and Immunities of free and natural Subjects within any of the Dominions of Us, Our Heirs or Successors."[349]

The charter made Connecticut virtually a self-governing colony, its purpose being that

> Our said People Inhabitants there, may be so religiously, peaceably and civilly governed, as their good Life and orderly Conversation may win and invite the Natives of the Country to the Knowledge and Obedience of the only true GOD, and the Saviour of Mankind, and the Christian Faith, which is Our Royal Intentions, and the adventurers free Possession, is the only and principal End of this Plantation. . . .[350]

Within the broad provisions of this charter, which was accepted by the colonies of Hartford and New Haven in 1665, Connecticut was to live for over a century and a half—indeed until 1818. Under this charter Congregationalism became the established ecclesiastical system, but the General Court later granted

permission for churches "soberly to differ or dissent," the Church of England being authorized to organize in 1727, and the Baptists and Quakers two years later.

In general it may be said that Hooker's rather extreme form of independency —which, however, permitted neighboring churches to unite for mutual aid and advice—had its limitations, but that it was a step toward preventing the interference of either the State or a central ecclesiastical authority in affairs of religion. He did not share the intolerance of so many of his contemporaries, and it is worth recording that during the fourteen years of his ministry in the First Church in Hartford only one person was formally admonished, and only one person excommunicated. It was largely due to him that Connecticut never went to the extremes of the theocratic State which we have seen in Massachusetts. He considered the right of franchise a political matter to be determined by each community rather than to be strictly controlled by a uniformly imposed religious test. His advocacy of the compact theory of the State with its emphasis on natural rights was to have an influence on American political theory, and ultimately on Church and State separation. For autocracy in either Church or State he had no sympathy. Popular sovereignty, liberty, moderation, were ideals which appealed to him and made him a forerunner of the liberals of a later time. Hooker's beauty of character has been recognized by all scholars; the true saint who "walks humbly with his God" must have something of tolerance, and he was such a man. The historian George Bancroft (1800–91) sensed this when he referred to his being

> . . . trained to benevolence by the discipline of affliction; versed in tolerance by his refuge in Holland; choleric, yet gentle in his affections; firm in his faith, yet readily yielding to the power of reason; the peer of the reformers without their harshness; the devoted apostle to the humble and the poor; severe towards the proud; mild in his soothings of a wounded spirit; glowing with the raptures of devotion, and kindling with the messages of redeeming love. . . .[351]

The spirit of Hooker's "Fundamental Orders" of 1639, which he was mainly responsible for establishing in Connecticut, is deeply religious, and was relatively liberal for its time. It begins:

> Forasmuch as it hath pleased the Allmighty God by the wise disposition of his diuyne prᵛidence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Harteford and Wethersfield are now cohabiting and dwelling in and vppon the River of Conectecotte and the Lands thereunto adioyneing; And well knowing where a people are gathered togather the word of God requires that to mayntayne the peace and vnion of such a people there should be an orderly and decent Gouernment established according to God, to order and dispose of the affayres of the people at all seasons as occation shall require; doe therefore assotiate and conioyne our

selues to be as one Publike State or Comonwelth; and doe, for our selues and our Successors and such as shall be adioyned to vs att any tyme hereafter, enter into Combination and Confederation togather, to mayntayne and p^r^searue the liberty and purity of the gospell of our Lord Jesus w^ch^ we now p^r^fesse, as also the disciplyne of the Churches, w^ch^ according to the truth of the said gospell is now practised amongst vs. . . .[352]

Hooker, although working for a free Church in a free State, unquestionably believed in an intimate relation between the two, but the fact that he had a tolerant mind without any of the persecuting spirit of some of the Massachusetts Puritans and that the Fundamental Orders contained pronounced democratic principles, resulted in the end in his contributing considerably to the cause of religious freedom. The Orders provided that government should be by the consent of the governed, with rulers responsible to the will of the electorate, and that civil privilege was not necessarily related under them to church membership except in the case of the governor, who was to be a member of "some approved congregation." This was a great gain in that it established a principle which implied, at least, "that loyalty to the state did not entail loyalty to the established church."[353] There was no religious test necessarily required for the franchise, citizenship being, as we have seen, a political matter to be determined by the several townships, not a religious matter to be determined by church membership. Indeed, in 1708 the colony of Connecticut gave dissenters, under certain regulations, permission to have separate churches, although they were still bound to pay the tax for the support of the established Congregational ministry.[354]

Hooker was a devoted Congregationalist, but his attitude was favorable to the development of leniency in dealing with religious dissenters. He was probably the most stimulating preacher of early New England, a student of democratic government, and, considering the conditions of the time, a generous-minded spirit who had a marked influence for tolerance. No wonder that Hubbard tells us that "after Mr. Hooker's coming over it was observed that many of the freemen grew to be very jealous of their liberties."[355] Indeed, due largely to his influence, the authorities in Connecticut were not inclined to the inquisitorial attitude. But it was a long time before Quakers, whose extremes made them at that time seem almost as dangerous to conservatives as Communists do today, and Episcopalians, who were too much identified with the British crown to be popular, and other nonconforming groups, secured their entire freedom. This story will be told in a later chapter.[356]

Parrington, in his stimulating *Main Currents in American Thought,* has well summed up Hooker's contribution to political thought:

. . . Three creative ideas seem to have determined his thinking: the compact theory of the state, the doctrine of popular sovereignty, and the conception of the state as a

public-service corporation, strictly responsible to the will of the majority—ideas that Roger Williams elaborated in detail and during many years of service reduced to a working system in the commonwealth of Rhode Island. That Hooker should have grasped so firmly the essentials of the new democratic theory will surprise no one who is acquainted with the political speculations of English Independency. . . .[357]

(2) CECIL CALVERT, LORD BALTIMORE *c.* 1605–75, ROMAN CATHOLIC

This founder and proprietary of Maryland inherited from his father, George Calvert (1580–1632), first Baron Baltimore and originator of the Maryland project, a generous and liberal outlook for the times. This was fortunate, as the proprietary was virtually supreme in the province, which was treated much as a quasi-royal government. He was by charter "Absolute Lord of Maryland and Avalon," the only recognition of the overlordship of the sovereign being "the yielding" to him every year of two Indian arrows at Easter time.[358] Consequently he was head of the Church as well as of the State. He "lacked no single Royal power."[359]

The charter contemplated a definitely Christian state but was silent on the issue of denominationalism, referring merely to "God's holy and true Christian religion."[360] This attitude was motivated partly by a Christian spirit unusually broad for the period, and partly by the demands of the situation, as the population of the colony already included a large number of Protestants, and the groups from which further immigration could be mainly expected were of the same religious persuasion. It is consequently quite probable that the king, whose government at the time was opposed both to Puritans and Roman Catholics, would not have given a charter under any narrower conditions. But this should not detract unduly from the credit to be given to Lord Baltimore for his tolerant attitude. It is clear that in his feudal character as "Lord Proprietor" it was within Calvert's jurisdiction to administer ecclesiastical as well as State affairs in what was virtually a palatinate. The fact that he took up this work in a broad spirit was greatly to his credit.[361]

The "Instructions" which Cecil Calvert issued November 13, 1633, to his brother Leonard Calvert, Deputy Governor of the Province of Maryland, and his commissioners, begin with this liberal statement:

1. Inpri: His LoPP requires his said Gouernor & Commissioners th[t] in their voyage to Mary Land they be very carefull to preserue vnity & peace amongst all the passengers on Shipp-board, and that they suffer no scandall nor offence to be giuen to any of the Protestants, whereby any iust complaint may heereafter be made, by them, in Virginea or in England, and that for that end, they cause all Acts of Romane Catholique Religion to be done as priuately as may be, and that they instruct all the Romane Catholiques to be silent vpon all occasions of discourse concerning the matters of Religion; and that the said Gouernor & Commissioners treate the Protestants w[th] as much mild-

ness and fauor as Justice will permitt. And this to be obserued at Land as well as at Sea.[362]

It is clear that he wanted to provide an asylum for persecuted Roman Catholics and also to attract Protestant colonists.

In 1636 Lord Baltimore prescribed a liberal oath to be taken by Maryland governors. It reads:

I will not myself or any other, directly or indirectly, trouble, molest, or discountenance any person professing to believe in Jesus Christ, for or in respect to religion: I will make no difference of persons in conferring offices, favors, or rewards, for or in respect of religion: but merely as they shall be found faithful and well deserving, and endued with moral virtues and abilities: my aim shall be public unity, and if any person or officer shall molest any person professing to believe in Jesus Christ, on account of his religion, I will protect the person molested, and punish the offender.[363]

As a result of Cecil Calvert's influence, Church and State were considered separate under the proprietary from the foundation of the colony at St. Mary's City in 1634, except for a brief period during the 'fifties when Cromwell's dominance in England made it impossible, as Parliament deprived the proprietary of his government.

Some evidence of Calvert's open-mindedness may be seen by the questions which he propounded in 1641 to the Jesuit fathers in Maryland, probably prepared in consultation with Father Henry More (1586–1661), then the liberally minded vice-provincial of the Jesuit Order in England. These were in substance as follows:

1. Whether a Catholic layman could serve as a magistrate in any country where all the rights and immunities of the church were not preserved.
2. Whether the exemptions and immunities of the clergy were due to them *jure divino*, or by specific concession from princes and states.
3. Whether the erection of tribunals belonged to the power of the Keys (reserved to the church) or the power of the Sword (conceded to the laity); and whether a prince could erect an ecclesiastical tribunal without special commission from the pope.
4. Whether Catholic legislators could assent to laws placing matters testamentary and the distribution of the estates of decedents under the control of secular courts.
5. Whether Catholic legislators could consent to a law annulling all gifts or conveyances to ecclesiastical bodies made without special license from the prince.
6. Whether Catholic legislators could assent to laws placing matrimonial matters in the jurisdiction of the civil authorities.
7. Whether Catholic legislators could assent to a law prohibiting women from holding lands, unless they married within a stated period. [They understood this law to be intended to prevent women from making vows of celibacy, and donating or devising their lands for pious uses.]

8. Whether a Catholic secular judge could try and punish the clergy for crimes or misdemeanors without incurring the censures of the bill *In Coena*.

9. Whether Catholic legislators could enact, or a Catholic judge enforce, laws imposing taxes for public uses upon members of the clergy or ecclesiastical bodies without express license from the pope.[364]

The mere fact that Calvert could propose for clerical discussion such questions going to the very roots of the Church–State issue is significant evidence of his liberality, and we know that some of the inquiries ultimately resulted in affirmative legislative action. It was the first known formulation for America of certain difficult questions that would have to be adjusted between a Church that was authoritarian from conviction and a State that was to be democratic from equal conviction.

The colonial assembly issued "An Act concerning Religion," generally referred to as the Toleration Act. This followed the coming to the colony from Virginia of a number of exiled Puritans. It was adopted on April 21, 1649, and provided toleration for all "professing to believe in Jesus Christ" who did not deny His divinity or the doctrine of the Trinity. This act is sometimes referred to in extravagant terms, such as that it was "the first decree granting complete religious liberty to emanate from an assembly,"[365] but this is claiming too much. It is, however, significant in itself and because it came from a public assembly of sixteen members of whom at least half, and probably a slight majority, were Roman Catholics.[366] The closing words before the signatures of the governor and clerk of the assembly are "The freemen have assented." This was highly important. The plan of the proprietary for tolerating all orthodox Christians was thus duly approved by the representatives of the people of Maryland, who also specifically showed their opposition to all denominational "name calling." The Act did not provide for Jews, who continued to suffer minor discriminations in the state until 1828,[367] or for the various groups with Unitarian tendencies, but it made the position of Roman Catholic, Episcopalian, and Presbyterian equally favorable.

Here are its most important provisions:

Fforasmuch as in a well governed and Christian Common Wealth matters concerning Religion and the honor of God ought in the first place to bee taken, into serious consideration and endeavoured to bee settled. Be it therefore . . . enacted. . . . That whatsoever person or persons within this Province . . . shall from henceforth blaspheme God, . . . or shall deny our Saviour Jesus Christ to bee the sonne of God, or shall deny the holy Trinity the ffather sonne and holy Ghost, or the Godhead of any of the said Three persons of the Trinity or the Unity of the Godhead . . . shall be punished with death and confiscation or forfeiture of all his or her lands. . . .

. . . And whereas the inforceing of the conscience in matters of Religion hath fre-

quently fallen out to be of dangerous Consequence in those commonwealthes where it hath been practised, And for the more quiett and peaceable government of this Province, and the better to preserve mutuall Love and amity amongst the Inhabitants thereof. Be it Therefore . . . enacted (except as in this present Act is before Declared and sett forth) that noe person or persons whatsoever within this Province, or the Islands, Ports, Harbors, Creekes, or havens thereunto belonging professing to believe in Jesus Christ, shall from henceforth bee any waies troubled, Molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof within this Province or the Islands thereunto belonging nor any way compelled to the beleife or exercise of any other Religion against his or her consent, soe as they be not unfaithful to the Lord Proprietary, or molest or conspire against the civill Government established or to bee established in this Province under him or his heires. And that all & every person and persons that shall presume Contrary to this Act and the true intent and meaning thereof directly or indirectly either in person or estate willfully to wronge disturbe trouble or molest any person whatsoever within this Province professing to believe in Jesus Christ for or in respect of his or her religion or the free exercise thereof within this Province other than is provided for in this Act that such person or persons soe offending, shalbe compelled to pay trebble damages to the party soe wronged or molested, and for every such offence shall also forfeit 20^{s} sterling in money or the value thereof. . . ., Or if the parties soe offending as aforesaid shall refuse or bee unable to recompense the party soe wronged, or to satisfy such ffyne or forfeiture, then such offender shalbe severely punished by publick whipping & imprisonment during the pleasure of the Lord proprietary, or his Leiuetenant or cheife Governor of this Province for the tyme being without baile or maineprise. . . .[368]

The contrast between the narrow and intolerant attitude of the first paragraph quoted above and the remainder of the document is noticeable. We like to try to forget the former, attributing it to the intolerance of the times, and to remember the latter as more true to the spirit of the Calverts.

The Act further says:

* * * whatsoever pson or psons shall from henceforth vppon any occasion of Offence or otherwise in a reproachfull manner or Way declare call or denominate any pson or psons whatsoever residing traffiqueing trading or commerceing within this Province or Within any the Ports Harbors Creeks or Havens to the same belonging an heritick, Scismatick, Idolator, puritan, Independant, Prespiterian, popish priest, Jesuite, Jesuited papist, Lutheran, Calvenist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Sepatist, or any other name or terme in a reproachful manner relating to matter of Religion . . . [shall be fined in the] some of tenne shillings [and if unable to pay should be publicly whipped and imprisoned] without baile or maineprise [until he should publicly ask forgiveness of the offended party in the presence of the magistrate].[369]

It has been necessary to consider this early Act at some length, for Catholics

tend to quote only its liberal and constructive features, while non-Catholics are all too apt to minimize these and to show the serious limitations of the Act.

Justin Winsor's estimate of the significance of this action is worthy of quotation:

It is certain that, from the time the emigrants first landed at St. Mary's, religious toleration was the established custom of the Province. The history of Maryland toleration does not begin with the famous Act of 1649. That was merely a legislative confirmation of the unwritten law. Long before that enactment, at a time when intolerance and martyrdom was almost the law of Christendom, and while the annals of the other colonies of the New World were being stained with the record of crimes committed in the name of religion, in Maryland the doctrine of religious liberty was clearly proclaimed and practised. It is the imperishable glory of Lord Baltimore and of the State. For the first time in the history of the world there was a regularly constituted government under which all Christians possessed equal rights. All churches were tolerated, none was established. To this "land of the sanctuary" came the Puritans who were whipped and imprisoned in Virginia, and the Prelatists who were persecuted in New England.[370]

It is difficult to determine accurately the motives of the Act. They were complex. The desire to prevent dissatisfaction on the part of the Protestant element in the population—due especially to the considerable Puritan migration from Virginia about 1648—and to attract more Protestant settlers; the determination to prevent the Jesuits from gaining control; the need of saving the proprietor's authority in the province; fear that events in England might compromise their liberty; and Calvert's own generosity of outlook, were all factors. It is to his credit that the Act was passed not only with his support, but on his urging. It must also be remembered that this action was taken by a deliberative assembly divided as to religious affiliations between Protestants and Catholics; whereas in Rhode Island, whose assembly took somewhat similar action two years earlier, the background was entirely Protestant and more democratic.

The Act in the form given remained in force for only a few years, being repealed during the period of Puritan control, when an "Act Concerning Religion" was substituted, as follows:

It is enacted and declared in the name of his Highness the Lord Proprietor, with the consent and by the authority of the present General Assembly, that none who profess and exercise the Popish religion, commonly known by the name of the Roman Catholic religion, can be protected in this Province by the laws of England, Scotland, and Ireland and the dominions thereto belonging, published by his Highness the Lord Protector, but are to be restrained from the exercise thereof.

Such as profess faith in God by Jesus Christ (though differing in judgment from the

doctrine, worship and discipline publicly held forth) shall not be restrained from, but shall be protected in the profession of the faith and exercise of their religion, so as they abuse not this liberty to the injury of others, or the disturbance of the public peace on their part. Provided that this liberty be not extended to popery or prelacy, nor to such as under the profession of Christ hold forth and practise licentiousness.[371]

In 1658 the province was restored to Lord Baltimore, and the Toleration Act was again put in force.

The subsequent history of religious freedom and Church-State separation in Maryland shows many variations, but in general in Maryland's first century Catholic control had shown more respect for religious freedom than in the Protestant period. For instance, following the English Revolution of 1688 a royal government was set up and the Church of England established, and in 1715 the proprietary, the fifth Lord Baltimore, who had become a Protestant, was restored; but Catholics did not fare as well under the Protestant regime as Protestants did under the earlier and more tolerant rule of the Catholic Calverts.

Cecil Calvert should be gratefully remembered for the Act of Toleration of 1649, which gave Maryland a more liberal policy in matters of religion than any other colony in America at the time, excepting only Rhode Island and Pennsylvania. He also, with the support of the Assembly, subjected testamentary affairs and the recording of marriages to the civil authority, thereby making a notable departure from precedent in the interest of Church-State separation,[372] and provided for the principle of voluntary parochial support.[373] He never visited his proprietary province, so his inclusion in this list of leaders in the cause of American religious freedom might be questioned; but as he planned to settle in America and was prevented only by the exigencies of the home situation affecting his colony, and as he governed Maryland through his resident deputies with much wisdom and toleration for forty-three years, his place seems deserved.

(3) ROGER WILLIAMS, *c.* 1603–82/83, INDEPENDENT, BAPTIST, "SEEKER"

This Independent, who became a Baptist and later a Seeker, was a graduate of Cambridge University. On his arrival in Boston in the winter of 1630–31 he was kindly received and was given a call to the Boston Church. This he declined because he "durst not officiate to an unseparated people."[374] He soon became known as an opponent of all official connection between Church and State. While teacher in the Salem Church, he incurred the enmity of the authorities for his attempt to bring in what he conceived to be a more scriptural and democratic system of church government than there prevailed. The General Court, October 9, 1635, found him guilty of disseminating new and dangerous opinions

and sentenced him to banishment out of its jurisdiction. Here is the court's full action:

Whereas Mr. Roger Williams, one of the elders of the Church at Salem, hath broached and divulged divers new and dangerous opinions, against the authority of magistrates, as also writ letters of defamation, both of the magistrates and churches here, and that before any conviction, and yet maintaineth the same without any retraction; it is therefore ordered that the said Mr. Williams shall depart out of this jurisdiction within six weeks now next ensuing, which, if he neglect to perform it, it shall be lawful for the governor and two of the magistrates to send him to some place out of this jurisdiction, not to return any more without written license from the Court.[375]

Later the government, fearing his influence in Massachusetts, decided to ship him back to England, but before he could be apprehended he had fled from the colony.

Williams had been suspected by the colonial authorities on many grounds, such as what John Cotton referred to as his "violent and tumultous" disposition; his condemnation of the Puritan State-Church system; his conscientious objection to certain oaths by which the Massachusetts oligarchy was attempting to bind discontented elements to submission; his statement that the civil authorities had no power to enforce the religious injunctions of the ten commandments; his upholding of the property rights of Indians in opposition to English claims. He had found in Massachusetts freedom from the rule of ecclesiastical superiors in the person of bishops, to which he had specially objected in England, but not what was to him the other most important part of "soul liberty," freedom from interference by the civil authority.

Banished from Massachusetts Bay in the winter of 1635–36 because of these and other views, including his sympathy with the accused Antinomian leaders, he became the founder, in Providence, Rhode Island, of what has generally been considered the first American Baptist Church (1639), although some think that this honor should be assigned to Newport, which was fully organized on a Baptist basis in 1644 after several years of informal existence. After a few months in this denomination Williams became a Seeker, one who was skeptical of the special divine claims of all churches and creeds but accepted the fundamentals of Christianity.[376] He took the ground that the State had no jurisdiction over the consciences of men, who must have "soul liberty." He wanted a colony which would shelter all "distressed in conscience." His toleration included even "popish and Jewish consciences," so that as a result of his efforts Providence became a refuge for victims of religious persecution. It was an evidence of his tolerant spirit that he considered the Indians as his brothers, in whose welfare he was always deeply interested.

The Bloudy Tenent, of Persecution for cause of Conscience, which was in

many ways Williams' most important contribution of a literary character, appeared in the same year (1644) as Milton's great plea for freedom of conscience, the *Areopagitica,* and was followed three years later by Jeremy Taylor's *Liberty of Prophesying.* There was evidently a new spirit stirring in a few great souls, who realized that intolerance and persecution were both unchristian and opposed to the best interests of the State. The *Bloudy Tenent* was but an enlargement of Williams' view that "God requireth not an uniformity of Religion." It was prepared by its author with a synopsis or résumé of the argument of the book. It is not too much to say that the lapse of three centuries since its writing has increased rather than decreased its significance. It stands out as representing an epoch-marking milestone in the history of the separation of Church and State and of religious freedom. We make no apology for reprinting in full its summary:

First, That the blood of so many hundred thousand soules of *Protestants* and *Papists,* spilt in the *Wars* of *present* and *former Ages,* for their respective *Consciences,* is not *required* nor *accepted* by *Jesus Christ* the *Prince* of *Peace.*

Secondly, Pregnant *Scriptures* and *Arguments* are throughout the Worke proposed against the *Doctrine* of *persecution* for the *cause* of *Conscience.*

Thirdly, *Satisfactorie* Answers are given to *Scriptures,* and objections produced by Mr. *Calvin, Beza,* Mr. *Cotton,* and the Ministers of the New English Churches and others former and later, tending to prove the *Doctrine* of *persecution* for cause of *Conscience.*

Fourthly, The *Doctrine of persecution* for cause of *Conscience,* is proved guilty of all the *blood* of the *Soules* crying for *vengeance* under the Altar.

Fifthly, All *Civill States* with their *Officers* of *justice* in their respective *constitutions* and *administrations* are proved *essentially Civill,* and therefore not *Judges, Governours* or *Defendours* of the Spirituall or Christian State and Worship.

Sixthly, It is the will and command of *God,* that (since the comming of his Sonne the *Lord Jesus*) a *permission* of the most *Paganish, Jewish,* Turkish, or Antichristian consciences and worships, bee granted to all men in all *Nations* and *Countries:* and they are onely to bee *fought* against with that *Sword* which is only (in *Soule matters*) *able* to *conquer,* to wit, the *Sword* of *Gods Spirit,* the *Word* of *God.*

Seventhly, The *State* of the Land of *Israel,* the *Kings* and *people* thereof in *Peace* & *War,* is proved *figurative* and *ceremoniall,* and no *patterne* nor *president* for any *Kingdome* or *civill State* in the *world* to follow.

Eighthly, *God* requireth not an *uniformity* of *Religion* to be *inacted* and *inforced* in any *civill State;* which inforced *uniformity* (sooner or later) is the greatest occasion of *civill Warre, ravishing* of *conscience, persecution* of *Christ Jesus* in his servants, and of the *hypocrisie* and *destruction* of *millions* of *souls.*

Ninthly, In holding an inforced *uniformity* of *Religion* in a *civill state,* wee must necessarily *disclaime* our desires and hopes of the *Iewes conversion* to *Christ.*

Tenthly, An inforced *uniformity* of *Religion* throughout a *Nation* or *civill State,*

confounds the *Civill* and *Religious,* denies the principles of Christianity and civility, and that *Jesus Christ* is come in the Flesh.

Eleventhly, The permission of other *consciences* and *worships* then a state professeth, only can (according to God) procure a firme and lasting *peace,* (good *assurance* being taken according to the *wisedome* of the *civill State* for *uniformity* of *civill obedience* from all sorts.)

Twelfthly, lastly, true *civility* and *Christianity* may both flourish in a *state* or *Kingdome,* notwithstanding the *permission* of divers and contrary *consciences,* either of *Iew* or *Gentile.*[377]

Williams was not content with expressing these views as to the importance of toleration. He was willing to work to put them into practice. In the same year in which the *Bloudy Tenent* appeared he went far toward realizing its ideal by securing a charter for the united "Providence Plantations in Narragansett Bay in New England," in which only civil government was recognized. Three years later (1647) a civil code was drawn up under his leadership. In this, complete liberty of conscience was granted. Discussing Roger Williams' work in Providence, Luzzatti refers to the town as "one of the first where God could be worshipped in freedom." He thinks of it as a true "City of God."[378]

In 1654, only a few months after his election to be the chief official of the town, certain difficulties arose which Dr. Backus, the early historian of the Baptists, referred to as having to do with "tyranny and licentiousness." This led Williams to write his famous "ship" letter on religious freedom. It is addressed "To the Town of Providence," and was dated January, 1654–5:

That ever I should speak or write a tittle, that tends to such an infinite liberty of conscience, is a mistake, and which I have ever disclaimed and abhorred. To prevent such mistakes, I shall at present only propose this case: There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or a human combination or society. It hath fallen out sometimes, that both papists and protestants, Jews and Turks, may be embarked in one ship; upon which supposal I affirm, that all the liberty of conscience, that ever I pleaded for, turns upon these two hinges—that none of the papists, protestants, Jews, or Turks, be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers or worship, if they practice any. I further add, that I never denied, that notwithstanding this liberty, the commander of this ship ought to command the ship's course, yea, and also command that justice, peace and sobriety, be kept and practiced, both among the seamen and all the passengers. If any of the seamen refuse to perform their services, or passengers to pay their freight; if any refuse to help, in person or purse, towards the common charges or defence; if any refuse to obey the common laws and orders of the ship, concerning their common peace or preservation; if any shall mutiny and rise up against their commanders and officers; if any should

preach or write that there ought to be no commanders or officers, because all are equal in Christ, therefore no masters nor officers, no laws nor orders, nor corrections nor punishments;—I say, I never denied, but in such cases, whatever is pretended, the commander or commanders may judge, resist, compel and punish such transgressors, according to their deserts and merits. This if seriously and honestly minded, may, if it so please the Father of lights, let in some light to such as willingly shut not their eyes.

I remain studious of your common peace and liberty.

ROGER WILLIAMS.[379]

In 1663 the colony of Rhode Island and Providence Plantations secured a charter with remarkably liberal provisions for religious freedom. It was obtained principally through the instrumentality of Williams' coworker, the Reverend John Clarke, and its main provisions are outlined in the section dealing with him.[380]

Williams' ecclesiastical connection was a varied one, first an Anglican, then a Separatist, then a Baptist, finally a Seeker. He considered all men the children of God and consequently was a believer in true Christian fellowship. "He was primarily a political philosopher rather than a theologian—one of the acutest and most searching of his generation of Englishmen, the teacher of Vane and Cromwell and Milton, a forerunner of Locke and the natural-rights school, one of the notable democratic thinkers that the English race has produced. . . ."[381]

Williams took his Biblical authority for the doctrine of separation of Church and State from the various "come out" and "be ye separate" texts, such as Revelation 18.4; Isaiah 52.11, and II Corinthians 6.17, as well as from the general principles of Christianity summed up in the two great commandments. Cotton Mather (1663–1728), who lived in the generation following, said that he was the "first *rebel* against the divine *church-order* established in the wilderness."[382]

His theory of the Church was that of a voluntary association of people for a specific object, much like the medieval theory of the corporation. It was a corporate body with certain definite rights. He has this description of it:

The *Church* or company of *worshippers* (whether true or false) is like unto a . . . *Corporation, Society,* or *Company* . . . in *London;* which Companies may hold their *Courts,* keep their *Records,* hold *disputations;* and in matters concerning their *Societie,* may dissent, divide, breake into Schismes and Factions, sue and implead each other at the *Law,* yea wholly breake up and dissolve into pieces and nothing, and yet the *peace* of the *Citie* not be in the least measure impaired or disturbed; because the *essence* or being of the *Citie,* and so the *well-being* and *peace* thereof is essentially distinct from those particular *Societies;* the *Citie-Courts, Citie-Lawes, Citie-punishments* dis-

tinct from theirs. The *Citie* was before them, and stands absolute and intire, when such a *Corporation* or *Societie* is taken down.[383]

He substituted the compact theory for the divine-right theory of the State. He believed that the civil government had to do only with civil affairs, and that it rested on the consent of the people. It must not mix in church matters, for any attempt by the State to force uniformity of religion causes civil wars, the "ravishing of conscience," and many other ills. The right of religious liberty was to him fundamental. It had never been surrendered to the State. It was not the gift of government but something which the people retained when they formed their government.

Parrington says of his debate with the Reverend John Cotton (1584–1652), caused by the latter's reading *The Bloudy Tenent,* "Aristocracy and democracy joined issues, and the vital question of the rights and liberties of the individual citizen in the political state for the first time was critically examined in America."[384] Cotton did not believe in religious freedom, and favored restricting the political franchise to members of the Established Church. Williams justified the Protestant principle of the right of private judgment. Although reactionary contemporaries referred to his colony of Rhode Island as "Rogues Island," history records its vital contribution to American freedom.

Some idea of how advanced he was in the matter of religious freedom may be seen by another quotation from *The Bloudy Tenent.* He says:

> All civil states with their officers of justice, in their respective constitutions and administrations, are . . . essentially civil, and therefore not judges, governors, or defenders of the Spiritual, or Christian, State and worship. . . It is the will and command of God that, since the coming of His Son, the Lord Jesus, a permission of the most Paganish, Jewish, Turkish or anti-Christian consciences and worship be granted to all men, in all nations and countries; and they are only to be fought against with that sword which is only, in Soul matters able to conquer, to wit; the sword of the Spirit—the Word of God. . . . God requireth not an uniformity of religion to be enacted and enforced in any civil state; which enforced uniformity, sooner or later, is the greatest occasion of civil war, ravishing consciences, persecution of Christ Jesus in His servants, and of the hypocrisy and destruction of millions of souls. . . . An enforced uniformity of religion throughout a nation or civil state confounds the civil and religious, denies the principles of Christianity and civility, and that Jesus Christ is come in the flesh.[385]

Later in life, in a letter to a friend, he reiterates even more forcibly the same convictions. He maintains that "forced worship stincks in Gods nostrils," that it makes the church "national, figurative and ceremonial," and that "there is no other way of preserving peace in the world but by permission of differing consciences."[386] To the same correspondent we owe this quotation from Gov-

ernor John Haynes (1594?–1654), who said to him: "... I think, Mr. Williams, I must now confess to you that the most wise God hath provided and cut out this part of His world for a refuge and receptacle for all sorts of consciences. . . ."[387]

Here it is necessary to refer briefly to a matter in connection with Roger Williams which has been much misunderstood and has resulted in his being much criticized by some Roman Catholic writers. In the first printed edition of the Rhode Island charter, published in Boston in 1799, and in some subsequent editions, there was a statement in connection with the clause regarding religious freedom reading "Roman Catholics only excepted." This clause is, however, wanting in the early manuscript copies of the charter, and is in conflict with many statements of Roger Williams and some of the other colonists. It was evidently interpolated when the Toleration Act of 1689 in favor of Protestant dissenters deprived Roman Catholics in England of liberty. It was not removed in the laws of Rhode Island until the General Assembly so decreed in 1783,[388] but the Code of 1647 and its re-enactment in 1663 did not include the anti-Catholic proviso, which would have been quite inconsistent with Rogers Williams' principles. It will be remembered that he advocated to Oliver Cromwell the toleration of Catholics, and that in the ship on the high seas which he used as his figure to describe the State, Catholics, Protestants, and Turks (that is, Mohammedans) were all included, but they were subject to the captain and other officers of the ship in matters of maintaining order and discipline. This whole matter was largely theoretical in Williams' day, because in what is now, relatively speaking, the most Roman Catholic state in the country there were few if any Catholics. The *Catholic Encyclopedia* in its article on Rhode Island states: "It is said that in 1680 there was not one Catholic in the colony, and for a long period their number must have been small."

Williams had, of course, as a Protestant, serious difficulties with the Roman Catholic position, but he dealt with the matter in a straightforward way by suggesting the possibility that Irish Catholics might acknowledge the pope only in spiritual affairs, pledging civil obedience to their State, a formula entirely acceptable to most Roman Catholic leaders today.[389]

Closely related to Williams' belief in religious freedom was his passionate devotion to democracy. It has frequently been stated that the story of social revolt in America begins with him, and that the revolt was against forms of authoritarian and totalitarian rule which seemed to him inconsistent with Christian teaching. His latest biography brings this out. It is called *The Irrepressible Democrat*.[390]

Roger Williams' great interest was to provide adequate civil and religious liberty through the laws of the State. He inherited much from the Reforma-

tion, including his conviction of the right of individual inquiry and the equality of all men in civil and spiritual matters. He was a strong believer that the end of the Church was spiritual and that it must ever be separate and distinct from the State, although it is the duty of the State to protect the Church in civil matters. Indeed the protection of the individual in all his natural and civil rights and liberties was to Williams the chief function of the State. He was probably the most advanced political thinker in the Colonial period in this country. He was also an advanced individualist in religion, with an inadequate conception of the Church as it is understood today by both Protestant and Catholic leaders, but a world-famous reformer.

We have referred only to Williams' contribution to the cause of religious freedom and democracy, without entering into the controversy between Massachusetts and Rhode Island regarding the justice of his banishment. That he had shortcomings—as shown, for instance, in his debate with the Quakers—and that he went to extremes in his many controversies in the fields of Church and State policies, may be freely granted, without questioning the importance of his contributions to the cause of freedom.[391] To get a full realization of this let us go to the law faculty of the University of Heidelberg in its great days half a century ago. Professor Georg Jellinek (1851–1911), whose study of the origins of the rights of citizens in free states will be frequently quoted in these volumes, uses these impressive words:

> The idea of legally establishing inalienable, inherent and sacred rights of the individual is not of political but religious origin. What has been held to be a work of the Revolution was in reality a fruit of the Reformation and its struggles. Its first apostle was not Lafayette but Roger Williams, who, driven by powerful and deep religious enthusiasm, went into the wilderness in order to found a government of religious liberty, and his name is uttered by Americans even to-day with the deepest respect.[392]

Francesco Ruffini (1863–1934), recently Professor of Ecclesiastical Law at the University of Turin, and a leading European authority on the history of religious freedom, may also be quoted with reference to Roger Williams, thus balancing a tribute from Southern Europe with one from the North. He says:

> Henceforth the noble cause of religious liberty may find one who will develop it with greater vigour of reasoning and more copious erudition, but never one, however fervent a believer, who will excel Roger Williams in breadth of conception and sincerity of advocating that cause. And therefore it has been possible to say of him, in imaginative phrase and with perfect justice, that while other writers, in the limitations which they place upon liberty, resemble those poets who, after declaring their hero to be invulnerable, proceed to clothe him in the commonest armour, Roger Williams, on the contrary, allows Truth to stand alone, surrounded only by her armour of light.[393]

His monuments at Providence, including the one on the dome of the state capitol, and his choice to represent America on the great memorial at Geneva to the heroes of the Reformation, are other striking evidences of his influence and fame.

(4) JOHN CLARKE, 1609–76, BAPTIST

This liberal-minded Baptist, who had been educated at the University of Leyden, has not received as much credit as he deserves. Few men of his day had such advanced views regarding religious freedom. He was born in England and emigrated to Boston in 1637, sympathizing deeply with the Puritan movement. He was, however, so distressed at the theological intolerance in the Massachusetts colony, as evidenced by the edicts of banishment against Anne Hutchinson[394] and others, that he proposed to some friends—largely among the liberal elements in the Boston church who had been influenced by Mistress Hutchinson—that they settle in some new jurisdiction where they could enjoy religious freedom. His own account of the conditions he found in Boston, and of his reasons for leaving, are thus recorded in his *Ill Newes from New-England.*

> I thought it not strange to see men differ about matters of Heaven, for I expect no less upon Earth. But to see that they were not able so to bear with others in their different understandings and consciences, as in these uttermost parts of the world to live peaceably together, whereupon I moved the latter, for as much as the land was before us and wide enough with the profer of Abraham to Lot, and for peace sake, to turn aside to the right hand or to the left. The motion was readily accepted and I was requested with some others to seek out a place which I was ready to do. . . .[395]

The same emphasis on religious freedom as a cause for the settlement of Aquidneck is brought out in a letter of Dr. Clarke to Charles II in 1662.

> Your petitioners were necessitated long since for cause of conscience, with respect to the worship and service of God to take up a resolution to quit their deare and native country and all their near and precious relations and enjoyments therein, and to expose themselves and their families to all the hazards and inconveniences which they might meete upon the vast and swelling ocean over which they should pass, or in the barbarous and howling wilderness to which they might come. . . . Where for the aforesaid causes of conscience and for peace sake they were also necessitated to travail further among the barbarians in places untrod and with no small hazard to seek out a place of habitation [Aquidneck], where, according to what was propounded in your petitioners first adventure, they might with freedome of conscience worship the Lord their God as they were persuaded.[396]

The exponents of "soul liberty," including several marked personalities, first tried New Hampshire, but it was so cold that they shipped on a vessel for

the south. They stopped at Providence, where they found that Roger Williams fully sympathized with their ideas and stood ready to help them in any way in his power. He advised them to settle on Aquidneck, a small nearby island sixteen miles long and not over five miles broad. They feared, however, that it might come within the jurisdiction of Plymouth, so Clarke, two of his companions, and Williams went there, and were told that if they settled as proposed on the island in Narragansett Sound they would be regarded as "free" and "treated and assisted as loving neighbors." Before leaving Boston twenty-three men, under the lead of William Coddington and John Clarke, formed themselves March 7, 1638, by solemn compact "in the presence of Jehovah"[397] into a body politic—one of the earliest free states in the world. This is known as the Portsmouth Compact. They purchased Aquidneck of the Indian sachems, the deed being dated March 24 of the same year. They settled first in the northern part of the island, but the following year founded Newport in the south.

In 1640 the two towns of Portsmouth and Newport were united, and in the following year at a General Court it was agreed that the form of government "is a Democracie, or Popular Government. . . . It was further ordered by the authority of this present Courte, that none bee accounted a Delinquent for Doctrine: Provided, it be not directly repugnant to ye Government or Lawes established."[398]

In 1644 Clarke, who had joined the Baptists, founded and became the first preacher of the Baptist Church in Newport, now called the First Baptist John Clarke Memorial Church, which was the second Baptist church in America. It is worth recording that for the six years preceding this Clarke conducted public worship both for the Congregational and Baptist elements in the new community.[399] In the same year (1644) Aquidneck changed its name to Rhode Island. As a result, we frequently find reference to the "Colony of Rhode Island on Aquidneck."

Our interest in this early Baptist physician and preacher is mainly due to his contribution to the cause of religious freedom. This was made in many ways. In 1647 the town of Newport, which dominated the old Rhode Island colony, united with the towns of Portsmouth, Warwick, and Providence in forming the Colony of Providence Plantations, which afterward became the state of Rhode Island. The preamble of the General Laws of this united colony contains these two remarkable statements:

> It is agreed by this Present Assembly thus Incorporate, and by this Present Act Declared, that the Forme of Government Established in Providence Plantations is Democraticall; that is to say, a Government Held by ye Free and Voluntarie Consent of all, or the Greater Parte of the Free Inhabitants.

Each Man's Peaceable and Quiett Enjoyment of His Right and Libertie, notwithstanding Our Different Consciences, Touching the Truth as it is in Jesus.[400]

The laws adopted, probably drafted by Clarke, also include this statement: "And otherwise than this what is herein forbidden, all men may walk as their consciences persuade them, everyone in the name of his God. And let the saints of the Most High walk in this colony without molestation in the name of Jehovah, their God, for ever and ever."[401] This was encouraging doctrine for the year 1647!

In 1651 Clarke was induced to go to England with Roger Williams to promote the interests of Rhode Island and to procure the revocation of Governor Coddington's commission. While abroad he published, in 1652, a remarkable little book entitled *Ill Newes from New-England: or a Narrative of New-Englands Persecution.* The subtitle refers to the fact "that while old England is becoming new, New England is becoming old," a reference to the fact that the government in New England was considered reactionary and that intolerance was rampant. This pamphlet is one of the ablest defenses of religious liberty which early New England produced. It starts with an account of the persecutions which Clarke had himself experienced at the hands of the established order. He refers to being among those "who together for liberty of their consciences, and worship of their God, as their hearts were persuaded, long since fled from the persecuting hands of the Lordly Bishops"[402] only to find intolerance and persecution of another type.

After an account of his persecutions, due mainly to his preaching without the necessary license and his denying the lawfulness of infant baptism, the author gives quotations from the intolerant laws of Massachusetts. He is specially concerned about the one which calls for the banishment of those who oppose the baptizing of infants;[403] but from our standpoint the most interesting part of the book is the closing section which considers the arguments for religious liberty. The author lays special emphasis on the fact that "no servant of Christ Jesus hath any liberty, much less authority, from his Lord, to smite his Fellow-servant,"[404] and that Christ taught his disciples "to be meek, and lowly and gentle, yea, kind and curteous to all. . . ."[405] He denies that anyone has authority "to persecute, prosecute, or inforce others."[406] He sees clearly that any attempt to force worship "is the ready way to make men dissemblers and hypocrites before God,"[407] and shows that "This outward forcing of men in matters of conscience towards God to believe as others believe, and to practise and worship as others do, cannot stand with the Peace, Liberty, Prosperity, and safety of a Place, Commonwealth, or nation."[408] All in all the appeal is a powerful one.

In one of his addresses to the king (Charles II), probably written in 1662, he referred to the Rhode Island Colony as desiring "to be permitted to hold forth in a lively experiment that a flourishing civil state may stand, yea, and best be maintained, and that among English spirits, with a full liberty of religious concernments."[409] This was a theory based on experience, for by 1658 both Quakers and Jews had been received kindly in his own settlement of Newport.

As a result of his efforts in England he obtained from the king in 1663 a charter whose provisions were of exceptional liberality as far as differences of religion were concerned. It contained the following provisions:

. . . and because some of the people and inhabitants of the same colonie cannot, in their private opinions, conform to the publique exercise of religion, according to the litturgy, formes, and ceremonies of the Church of England, or take or subscribe the oaths and articles made and established in their behalf; and for that the same, by reason of the remote distances of those places will (as we hope) bee noe breach of the unitie and uniformitie established in this nation . . . doe hereby . . . ordeyne that noe person within the sayd colonie, at any time hereafter, shall bee in any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion . . . but that all and everye person and persons may . . . freelye and fullye have and enjoy his and theire own judgments and consciences in matters of religious concernments . . . they behaving themselves peaceably and quietly, and not using this libertie to lycentiousnesse and profanesse, nor to the civill injurye or outward disturbance of others. . . .[410]

Clarke returned from England in 1664 and was frequently thereafter elected to the General Assembly and twice deputy governor. He deserved the title so often given him, of being "Father of Rhode Island" and "Father of American Baptists." His fame has been outdistanced by that of his great friend and co-worker, Roger Williams,[411] but he nonetheless deserves our grateful thanks, for, as Williams said, "his grand motive" was nothing less than to give "a just liberty to all men's spirits in spiritual matters."[412]

The Reverend John Callender (1706–48), who lived a century after John Clarke and wrote in 1738 the first history of Rhode Island, left this testimony regarding his character and public services:

He was a faithful and useful minister, courteous in all the relations of life, and an ornament to his profession, and to the several offices which he sustained. His memory is deserving of lasting honour, for his efforts towards establishing the first government in the world, which gave to all equal civil and religious liberty. To no man is Rhode Island more indebted than to him. He was one of the original projectors of the settlement of the island, and one of its ablest legislators. No character in New England is of purer fame than John Clarke.[413]

(5) WILLIAM PENN, 1644–1718, QUAKER

As early as 1676 in his *Concessions* or proposed constitution for his colony in America, Penn provided for a large measure of religious freedom. He wanted to establish "a free colony for all mankind that will come hither." This idea was incorporated in the "Frame of Government" published the end of April, 1682, and supplemented by his laws agreed upon in England, a bill of rights, appended May 5. These were substantially in force throughout the colonial period. Penn provided that "All persons who profess to believe in Jesus Christ the Saviour of the World, shall be capable to serve this government in any capacity, both legislatively and executively."[114] It will be noticed that this was broad enough to permit Catholics as well as Protestants of all denominations to hold office, and there was nothing in this or later documents to prevent non-Christians, if they would obey the laws, from entering the colony. The plan generally followed in Pennsylvania was that embodied in Penn's Charter of Privileges, granted in 1701, which guaranteed freedom of worship to all who believed in "*One* Almighty God," and the right to hold office to all who believed in Jesus Christ.[115]

All of Penn's charters and grants of privilege show the same tolerant point of view. Probably most important from this standpoint was "The Great Law" or "The Body of Laws" adopted by the province of Pennsylvania at an assembly held at "Chester, alias, Upland," on December 7, 1682. Here are its essential provisions regarding religious freedom:

Be it therefore Enacted by William Penn, Proprietary and Governour, by, and with the Advice and Consent of the Deputies of the freemen of this Province and Counties aforesaid, in Assembly met, and by the Authority of the same, That these following Chapters and Paragraphs shall be the Laws of Pennsylvania and the territories thereof.

Chap. I. Almighty God, being Only Lord of Conscience father of Lights and Spirits, and the author as well as object of all Divine knowledge, faith, and Worship, who only can enlighten the mind, and persuade and convince the understandings of people. In due reverence to his Sovereignty over the Souls of Mankind. . . .

Be it enacted by the Authority aforesaid, That no person, now, or at any time hereafter, Living in this Province, who shall confess and acknowledge one Almighty God to be the Creator, Upholder and Ruler of the world, And who professes, him or herself Obliged in Conscience to Live peaceably and quietly under the civil government, shall in any case be molested or prejudiced for his, or her Conscientious persuasion or practice. Nor shall hee or shee at any time be compelled to frequent or Maintain anie religious worship, place or Ministry whatever, Contrary to his, or her mind, but shall freely and fully enjoy his, or her, Christian Liberty in that respect, without any Interruption or reflection. And if any person shall abuse or deride any other, for his, or her

different persuasion and practice in matters of religion, such person shall be lookt upon as a Disturber of the peace, and be punished accordingly.

But to the end That Looseness, irreligion, and Atheism may not Creep in under pretense of Conscience in this Province, *Be It further Enacted by the Authority aforesaid,* That, according to the example of the primitive Christians, and for the ease of the Creation, Every first day of the week, called the Lord's day, People shall abstain from their usual and common toil and labour, That whether Masters, Parents, Children, or Servants they may the better dispose themselves to read the Scriptures of truth at home, or frequent such meetings of religious worship abroad, as may best sute their respective persuasions.[416]

This constitution was, next to that of Rhode Island, the most liberal from the standpoint of religion existing for any considerable period in colonial America. "I abhor two principles in religion and pity them that own them," said the great Quaker who was mainly responsible for it. "The first is obedience to authority, without conviction; and the other is destroying them that differ from me for God's sake."[417] Fortunately he lived up to his ideals far better than most political reformers. He completely rejected the old theory of an established Church or any form of religious compulsion. In this way he contributed much toward secularizing the American State, but he was no modern secularist. He believed that the State should demand the proper observance of Sunday, but that on it men should worship according to "their respective persuasions."[418] These three words, when compared with the utterances of the most representative colonial leaders of the time elsewhere outside of Rhode Island, are harbingers of a better day for religious freedom. Indeed, he approached all problems in a truly religious, Christian spirit, and thought that real liberty, which he earnestly desired, could be secured only as a result of following Christian teaching.

As a result of Penn's efforts and of the support given to his liberal views in Europe by another great man from his state, Benjamin Franklin (1706–90), Pennsylvania gained abroad the reputation for encouraging religious freedom. Rabaut de Saint Étienne (1718–94), the well-known French Protestant pastor who opposed all forms of persecution, said in 1789:

> It is not toleration that I claim. That word implies an idea of compassion that degrades man. I demand equal freedom for all. Gentlemen will perhaps tell you and show you how the nations that surround us make an exception of those who do not profess the religion of the majority. O nation of France, you are not made to receive an example, but to give it! If, however, you wish to imitate, imitate the Pennsylvanians. They make exception of nobody. Man, whatever his religious belief, has the right of enjoying all the sacred privileges that belong to mankind.[419]

The practical result of this reputation was the large immigration to Penn's

colony of the various nonconforming and persecuted groups from Great Britain and Germany, not only Lutherans, but many from small sects which make up so large a portion of the Pennsylvania "Dutch" or Germans. Among these were Mennonites (including the ultraconservative Amish people), Moravians, Schwenkfelders, Palatines, and members of various Reformed churches. It has been estimated that by the time of the Declaration of Independence one-tenth of the population of what is now the United States was of German blood, and that of this group one-third was in Pennsylvania.[420] The denominational distribution at the same time is known, and is significant of the large degree of religious freedom which prevailed, thanks to the liberal policy initiated by Penn with such good effect that it had sunk deep into the colony's folkways. Of 403 different congregations, 106 were German Reformed; 68 were Presbyterian; 63 Lutherans; 61 Quakers; 33 Episcopalian; 27 Baptist; 14 Moravian; 13 Mennonites; 13 Dunker or German Baptist Brethren; 9 Roman Catholic; and 1 Dutch Reformed.[421]

Penn, because of his practical philanthrophy and sense of responsibility, his common sense, and his toleration, has been frequently called "the first American"—using the words in an idealistic sense. Certain it is that as a Christian statesman he was well ahead of his time, and highly influential with Thomas Jefferson and others of the Founding Fathers.

An interesting feature of William Penn's activity was that although primarily interested in securing toleration for Quakers he sought the same for all other religious groups. No one of the apostles of religious liberty considered in these volumes wrote more frequently and with more consistency on the subject. Among his many writings these may be mentioned:

Christian Liberty.

Considerations Moving to a Toleration and Liberty of Conscience.

The Great Case of Liberty of Conscience.

A Persuasive to Moderation to Dissenting Christians.

The Reasonableness of Toleration and the Unreasonableness of Penal Laws and Tests.

He took the ground that church government was no part of political government; that persecutors were never in the right; that a clear distinction must be made between the things that belong to Caesar and those that belong to God, and that the spirit of tolerance was a form of respect for the individual which was of the very essence of the Christian message.

(6) SAMUEL DAVIES, 1724–61, PRESBYTERIAN

Davies, who was sent to Hanover County, Virginia, in 1747 from Delaware, is one of the little-recognized heroes in securing American religious freedom.

He is probably better known as an ardent patriot and for his many sermons, especially the one he preached in August, 1755, after Braddock's defeat. When published, this contained a note in which he alluded prophetically to the services of Washington: "That heroic youth Colonel Washington, [then only twenty-three] whom I cannot but hope Providence has hitherto preserved in so signal a manner, for some important service to his country."[422] He was the first non-Episcopalian to secure a license to officiate in important sections of Virginia. The first Presbytery in the colony, that of Hanover, which originally included all of Virginia and much of the adjoining colony of North Carolina, was established mainly by his efforts. He became "the animating soul of the whole dissenting interest in Virginia and North Carolina."[423] He was the forerunner of Thomas Jefferson in advocating the complete separation of Church and State, and helped to lay the foundations for Jefferson's immortal work. In fact, this service is even more conspicuous than his work as president of Princeton, where he succeeded Jonathan Edwards for a short period.[424]

To understand the historical significance of the work of Davies and of the Hanover Presbytery in which he played the leading part, it is necessary to remember that Virginia was mainly settled and governed by Cavaliers and their sympathizers, Anglicans who had little regard for the rights of dissenters. The Church of England was established by law, and no other religious body had been allowed to erect church buildings in the towns, whereas the parish churches of the Established Church were erected at public expense. In spite of the fact that the Presbyterian ministers were, as a general rule, the best educated and qualified for effective pastoral work in the colony, they and the Baptists, who were equally earnest but less educated, had to pay taxes to support the Episcopal Church, too many of whose incumbents were virtually political appointees with few spiritual qualifications. They included a goodly number of men of poor moral character, as has been frankly recognized by the historians of the Church, such as Bishop Meade. Relatively few had the advantage possessed by so many of the Puritan divines in New England, of the combination of American and English university study, while some were men who had been discarded by the English Church.[425] Furthermore, most of the Episcopal ministers, being educated abroad and members of the established English Church, were intensely loyal to the crown, while Presbyterians were largely educated in this country and were devoted to the cause of liberty. This is shown by the fact that Princeton, then a Presbyterian institution, had a larger number of signers of the Declaration of Independence than any other college.

Davies' ministrations in Hanover County were interfered with by the governor and council, undoubtedly at the instigation of the Episcopal clergy. He carried the matter of the rights of dissenters under the Act of Toleration of

1689 before Peyton Randolph, the King's attorney in Virginia, in 1748, and later before influential individuals and groups in England, and finally secured action which implied that the Act of Toleration did indeed extend to the colony. The doctrine of the court had been that the Act, if it extended to Virginia, which was considered doubtful, admitted the licensing of a place of worship for a dissenting minister only in the county where he resided, while Davies had been serving congregations in different counties. The official attitude was taken to prevent the excesses which sometimes went with itinerant preaching and the making of proselytes from the Established Church. Dr. Davies' success in securing little by little the application of the Act of Toleration to the colony was largely due to the fact that he had made a very special study of the laws of England and of the civil and religious rights and privileges of British citizens. He always pleaded his own cause with such power that even his enemies are reported to have said: "What a lawyer was spoiled when Davies took the pulpit!"[426]

Davies' argument on this and other occasions ran, according to his biographer, about as follows. Although the Act of Uniformity and other English penal laws against nonconformity were not in force in the colonies, there was a law of the same kind passed by the Virginia legislature, requiring all adult persons to attend the Established Church. Neither did he plead the Act of Toleration as an English law, but "as received into the body of the Virginia laws" by the Virginia legislature, for in 1699 it exempted persons from the penalty for absence from church and permitted them to hold meetings if they qualified as Protestant dissenters under the terms of the Toleration Act. He maintained then that he had a right to a license upon complying with the terms of the Act of Toleration.[427]

The Presbyterians' representative won his point, and was granted licenses for the three additional meetinghouses. His opponents accepted his view that the Act of Toleration extended to Virginia, or else they were outvoted by those who did. Their next objection was that the Act did not permit a dissenting minister to have a plurality of meetinghouses, and this "plurality" matter was long in dispute.

The king's statement, "You are to permit a liberty of Conscience to all persons except papist, so they be contented with a quiet and peaceable enjoyment of the same, not giving offence or scandal to the Government,"[428] seems to have supported Davies' contention, as did a letter written by Dr. Philip Doddridge (1702–51) to him in 1751. "His Majesty," Doddridge wrote, "is so strenuous an asserter of the religious rights of all his subjects that none either in civil or ecclesiastical stations must think of recommending themselves to him by invading them."[429] Doddridge did not, however, get much sympathy

from the Bishop of London, who felt that Davies was going to extremes. How, wrote the bishop, could the latter justify his conduct when "under the colour of a toleration to his own conscience" he was "labouring to disturb the conscience of others." He came far from home, "not to serve people who had scruples, but to a country where the Church of England had been established from its first plantation, and where there were not above four or five dissenters within one hundred miles of it, not above six years ago." The bishop felt that Davies was not justified "in taking upon himself to be an itinerant preacher, and travelling over many counties to make converts."[430]

The bishop and other opponents of applying the full scope of the Act of Toleration to dissenting ministers almost always returned to this point of itineracy. They granted that Presbyterians could hold their faith, and that a Presbyterian minister might conduct one or two churches or chapels, but they considered itinerant preaching dangerous, and not contemplated by the Act.

Davies' reply to the bishop fills twenty printed pages. He clearly shows that he had not gone beyond the law as both understood and acted upon in England. He maintained that because of the scattered population in parts of Virginia some itinerating was essential, as even the Anglican clergy had found out, and that in his case he was serving various licensed preaching stations. He recognized that some itinerants went to extremes, and he objected to being classed with them by the bishop. But throughout the long letter he showed a fairly tolerant and amicable spirit. Here is an extract from it:

> Your lordship huddles me promiscuously with the Methodists, as though I were of their party. I am not ashamed to own that I look upon Mr. Whitefield as a zealous and successful minister of Christ; and as such to countenance him. I love him, and I love your lordship, (the profession, I hope, will not be offensive) because I hope you are both good men: and if my affection to him proves me one of his party, I hope your lordship will conclude me one of your own too: yet I am far from approving sundry steps in Mr. Whitefield's first public conduct; and I am glad to find by some of his late writings that he does not approve of them himself.[431]

As a result of Davies' various efforts the Presbyterians' whole status was improved. Furthermore, he and his associates of the Hanover Presbytery, supported by the Baptists and Quakers and a small sprinkling of liberal Episcopal laymen, had the courage to demand religious freedom as a natural right, not being satisfied with the obtained measure of "toleration."[432] They did not oppose the religious doctrines of the Episcopal Church, but they felt that these doctrines were not being "faithfully preached," and that the right of freedom was at stake because the parishes had no final say in the selection of their own ministers. Their vestries could only recommend a clergyman, the government having the right to put him in actual possession of a parish.[433]

Bost's recent thesis on Samuel Davies[434] shows that he worked primarily from the point of view of an advocate of the rights of Presbyterians, and incidentally of other dissenters, to carry on their work under fair conditions, and that he had relatively little to say about the theory of religious freedom from the standpoint either of Church or State. But this should not blind us to the importance of his contribution toward breaking the strangle hold of the Establishment in Virginia.

Davies made a visit to England in 1753 with the Reverend Gilbert Tennent (1703–64) for two purposes: to represent the American synod in securing "the concurrence and assistance" of friends in Great Britain "for the relief of an helpless and oppressed people"; and to aid the trustees of the College of New Jersey in securing the means necessary for their work. The delegates carried a letter to the General Assembly of the Church of Scotland which reflects the condition of the time as far as the Presbyterians are concerned.

> In the colonies of New York, New Jersey, Pennsylvania, Maryland, Virginia, and Carolina, a great number of congregations have been formed upon the Presbyterian plan, which have put themselves under the Synodical care of your petitioners, who conform to the constitution of the Church of Scotland, and have adopted her standards of doctrine, worship, and discipline. There are also large settlements lately planted in various parts, particularly in North and South Carolina, where multitudes are extremely desirous of the ministrations of the gospel; but they are not yet formed into congregations and regularly organized for want of ministers. . . . There are no less than forty vacant congregations at present to support ministers. . . . The great number of vacancies in the bounds of this Synod, is owing . . . principally to the small number of youth educated for the ministry. . . .
>
> The difficulty (and in some cases impossibility) of sending youth two, three, four, or five hundred miles or more, to the colleges of New England, is also evident at first sight. Now it is from the college of New Jersey only, that we can expect a remedy for these inconveniences. . . .
>
> . . . The young daughter of the Church of Scotland, helpless and exposed in this foreign land, cries to her tender and powerful mother for relief.[435]

Davies' efforts to secure funds for the new college at Princeton were successful, but he was even more interested in gaining full religious toleration for the dissenters in Virginia. He talked on the subject with all sorts of people, but worked especially through the "Committee of the Deputation of Protestant Dissenters," formed to give assistance in this and similar cases. Referring to one of several conferences with the committee, Davies wrote in his journal:

> They at least advised me to get a petition drawn up to the King and Council, and subscribed by the dissenters in the frontier countries, which they apprehended would be of more weight than one from Hanover, because they were educated dissenters, and

were a good barrier against the French and Indians. They appointed some of their members to assist me in drawing up a petition; and I intend to wait on them as soon as possible for that end.[436]

According to his journal for November 18, 1754, the sought-for petition from Virginia reached Davies shortly before his departure for home. It was brought to the attention of the committee as well as of a co-operative Baptist minister, Dr. Joseph Stennett, who thought that there was more prospect of obtaining licenses for meetinghouses in Virginia from the Bishop of London's court than from the king in council. Davies asked him "to act in concert with the committee," which he promised to do. The journal again shows the general situation:

And indeed I expect more from his influence and zeal, than from the committee, that seem very slow and dilatory in their motions. As the majority of them are of the new scheme, they cannot look upon the dissenting interest in Virginia as a religious interest, because founded on principles which they disapprove; and therefore they can only espouse it as the cause of liberty: But a zeal for it in this view is not so vigorous a principle as in the other. The courtiers are so regardless of religion, abstracted from politics, that it will be difficult to carry such a point with them, especially as the whole weight of the government in Virginia will lie on the other side. However, I am in hopes, the alternative of taking out licenses in the bishop's court, or of presenting the petition, will succeed; and I have begged the committee and Dr. Stennett to take the one or the other method, as they think most expedient.[437]

After further consideration the British committee, whose influence Davies had so greatly stimulated, decided on a somewhat different procedure, as shown by two letters he received on his return to Virginia.

Rev. Sir:—The committee of the Deputation of Protestant Dissenters have received your petition to the King in Council about licensing houses for religious worship; and after the most mature consideration and advice thereon, they find it will not be prudent to present it at present. And their advice to you is—that when any house or place for religious worship is wanted, that you apply first to the County Court for a license thereof,—if refused there, then apply for license to the Governor and Council,—if refused there, then apply to the Governor alone for a license,—and if he refuses then use such house or place for religious worship, as if it had been licensed,—and they will then send you further directions how to act.

Signed by order of the said committee, by
Your most humble servant,
Nathl. Sheffield
Secretary to the said Committee.

Rev. Sir:—As a secret instruction to you which is not to be divulged until necessity requires it, I am by order of the said committee to inform you that if any persons are

prosecuted in your courts in Virginia for using such unlicensed houses or places for religious worship, after such application for license as in the other letter is directed—that then such person or persons so prosecuted should appeal to the King in Council here, and the Committee will take care to prosecute such appeal. Keep this advice in your own breast until a proper time of appeal comes.

Signed by order of the said Committee, by
Your most humble servant,
Nathl. Sheffield
Secretary to the said Committee.[438]

As a result of this advice, of certain developments in the colony, and of Davies' continued efforts and influence, he gradually won his point, without the need of taking the case formally to the king in council.[439]

In addition to Davies' activities as a direct advocate of toleration in Virginia and in England, he advanced the cause indirectly in other ways, especially by gaining public sympathy through his support of the government in the French and Indian War by patriotic preaching, aiding in the enlisting of recruits, and stimulating the morale of the soldiers. The war began while he was absent in England, but he returned in time to preach on March 5, 1775, the day set aside by the legislature for fasting and prayer. He preached on "God the Sovereign of all Kingdoms," a sermon which made a great impression. He presented the saving power of God in times of national crisis, called upon the people to confess their sins, personal and public, and to have faith in the saving power of the Almighty. God would help only as men would permit Him to use them. He closed his sermon with these words:

. . . Let us arouse ourselves, and be active. Let us cheerfully pay the taxes the government has laid upon us to support this expedition. Let us use our influence to diffuse a military spirit around us. I have no scruple thus openly to declare, that such of you whose circumstances allow of it, may not only lawfully enlist and take up arms, but that your so doing is a Christian duty, and acting an honourable part, worthy of a man, a freeman, a Briton, and a Christian.[440]

On July 10 General Braddock suffered his bad defeat. On July 20, Davies preached a sermon using as his text Isaiah 22.12–14, the prophet lamenting the weakness and suffering of his country. In this sermon he touched on the matter of the disabilities under which the dissenters were still suffering.

I also hope, [he said] that our rulers will find something else to do, in the present state of our country, than to harass and oppress a number of harmless dissenters, whose only crime it is to follow their conscience and not the direction of their superiors in matters of religion. Nay, I am persuaded that many of them, upon farther acquaintance with us, will be disposed to more moderate measures by their own innate candour and

a spirit of liberty. Let us therefore show ourselves worthy of protection and encouragement, by our conduct on this occasion.[441]

These and many other patriotic sermons did much to strengthen Davies' position and make the Establishment appreciate what he was doing for the colony. When Fauquier succeeded Dinwiddie as lieutenant governor in 1758, Davies, with a fellow clergyman, waited upon Fauquier with an address from the Presbytery of Hanover, assuring him of their patriotic desire to help stimulate the people to defend their liberties in the war against France, and requesting that he "would secure and continue to them the peaceable and unmolested enjoyment of the Liberties and Immunities of the Act of Toleration." The governor's reply was appreciative and encouraging. "The Presbytery may be assured," he said, "that I shall always exert myself to support the Act of Toleration, and secure the peaceful Enjoyment of its Immunities to all his Majesty's Subjects who conform thereto."[442] The governor was evidently impressed by Davies, for he wrote of him and his clerical associate, the Reverend Mr. Todd, that they were "men of considerable learning, strictly virtuous and of exemplary lives." "I wish I could inform your Lordship," he added, "that all your Clergy are equally qualified, but the case is far otherwise, with respect to some. . . ."[443]

There were, of course, other factors aiding the cause of toleration. Among these were the increase in the number and influence of dissenters and the need of having their religious wants met, the high caliber of the Presbyterian ministers, the loyal support given by them and their congregations to the government, and the fact that for various reasons the Episcopal clergy, among whom were some unworthy members, declined in influence. The fact that the Old Side and the New Side Presbyterians were able to unite in 1758 in the Synod of New York and Philadelphia also gave them added strength. All these factors resulted in an aroused public opinion which demanded that the dissenters should be relieved of hampering restrictions on their work.

This sketch of Davies may be closed by two quotations. The first is from the Reverend William Foote (1794–1869), a Southern church historian of a century ago:

His residence in the State is an era in its history. . . . The Virginia Synod claims him as her spiritual father; and the Virginia creed in politics acknowledges his principles of religious freedom and civil liberty. His influence on politics was indirect, but not the less sure. The sole supremacy of Christ is the Church,—the authority of the Word of God,—the equality of the ministers of religion,—and individual rights of conscience,—the principles for which he plead before the General Court, and in defense of which he encountered such men as Pendleton, Wythe, Randolph, and the whole host of the aristocracy, are now a part and parcel of the religious and political creed of an over-

whelming majority of the citizens of the "Ancient Dominion." He demonstrated the capability of the Church of Christ to sustain itself, not only without the fostering aid of the State, but under its oppressive laws. He showed the patriotism of true religion;—and in defending the principles of Presbytery, he maintained what Virginia now believes to be the inalienable rights of man.[444]

The second is from the author of the unpublished thesis on Davies quoted extensively in this sketch. Writing in 1942, he thus fairly sums up his subject's contribution to the cause of religious freedom:

Davies could not be called the champion of religious liberty in the sense of demanding complete freedom of worship for all, as he did not commit himself on that question. It was too far beyond his immediate situation and problems to be an issue. He deserves the title, however, because he fought with all his might and with every weapon at his disposal for the religious rights of those to whom he ministered, and what he gained for them he gained for all dissenters in Virginia. It might be said that he simply fought for religious toleration, but since the interpretation of what constituted toleration under the law was a major issue, it would be more accurate to say that he fought for religious liberty for his people and that his method was to demand their rights to the fullest extent as permitted by a generous interpretation of the law. To ask for more would have meant practically a demand for the elimination of the Establishment. This was to come later, no doubt partially as a result of Davies's influence persisting in the Presbytery of Hanover after his departure.[445]

The final result in behalf of toleration in Virginia was not attained until after Samuel Davies' death; but it was the Presbytery of Hanover, which he established in 1755, and which, as its first moderator, he had inspired with his ideals, that carried the struggle through to a successful end. In 1773 this Presbytery appointed a commission to lay the whole matter of church privileges and rights before the Virginia Assembly, following it up by similar actions the years following, until final success was secured in 1785, as we shall see later when dealing with the Bill for Establishing Religious Freedom in Virginia.[446]

When we consider Davies' effective work, his large ability, and his liberal-mindedness, it is probably not too much to say that he was the greatest man developed by colonial Presbyterianism, with the possible exception of Witherspoon.

(7) NOTE ON OTHER COLONIAL LEADERS OF RELIGIOUS FREEDOM, INCLUDING THE ROGERENES

Time and space do not permit making more than passing mention of others in the colonial period who contributed to the cause of religious freedom in this country. The great leaders in actually effecting freedom of conscience, were, as we have seen, mostly Baptists and Presbyterians, but the New England Congregationalists contributed some early writers who clearly saw its need.

John Wise (1652–1725) of Ipswich was a strong advocate of democracy and liberty in Church and State. He took the ground that the people were the source of all political power, not the State; that in their natural condition men were entirely free; and that even when they formed States and had to give up certain rights they retained as much freedom as was consistent with the welfare of the State. He strongly opposed in 1710 the establishment of synods, which he feared would mean the giving up of the independence of local churches. His views were amplified in 1717 in his *Vindication of the Government of New-England Churches,* which contained views on liberty that were influential in the Revolutionary period.

His interest was primarily in preventing all forms of ecclesiastical or political compulsion. Among his arguments "founded in the light of nature," appeared the following:

> The second great immunity of man is an original liberty instampt upon his rational nature. He that intrudes upon this liberty, violates the law of nature. . . .[447]

> The third capital immunity belonging to mans nature, is an equality amongst men; which is not to be denied by the law of nature, till man has resigned himself with all his rights for the sake of a civil state; and then his personal liberty and equality is to be cherished, and preserved to the highest degree, as will consist with all just distinctions amongst men of honor, and shall be agreable with the public good. . .[448]

> . . . Nor does natural fitness for government make a man presently governor over another; for that as *Ulpian* says, *by a natural right all men are born free;* and nature having set all men upon a level and made them equals, no servitude or subjection can be conceived without inequality. . . .[449]

> . . . The end of all good government is to cultivate humanity, and promote the happiness of all, and the good of every man in all his rights, his life, liberty, estate, honor, &c. without injury or abuse done to any. . . .[450]

No man with such views could have persecuted his fellow men.

Of colonial Congregationalists few were as ardent in support of religious liberty as the Reverend Jonathan Mayhew (1720–66). The historian Bancroft says of him that "From his youth he had consecrated himself to the service of colonial freedom in church and state."[451] In a sermon preached as early as 1748 he taught clearly the right of private judgment in Church-State matters and the need of separation of the two powers. The right to judge truth for oneself he considered "absolutely unalienable,"[452] and added that "Nothing is more incongruous than for an advocate of liberty to tyrannize over his neighbours."[453] In the controversy of 1763 over the "Society for the Propagation of the Gospel in Foreign Parts" he argued strongly for religious liberty as "the natural and legal right which protestants of all denominations have, in any

part of his majesty's dominions, to worship God in their own way respectively, without molestation."[454] In *A Thanksgiving Sermon on the Repeal of the Stamp Act,* 1766, he also pleaded eloquently for civil and religious liberty.

Another Boston divine of the same period, the Reverend Charles Chauncy (1705–87) was even more explicit. In his controversy with the Episcopal leader, the Reverend Thomas Bradbury Chandler (1726–90), on the subject of American bishops, which started with the latter's publication in 1767 of *An Appeal in Behalf of the Church of England in America,* he said: "We are, in principle, against all civil establishments in religion. . . . It does not appear to us, that God has entrusted the State with the right to make religious establishments."[455]

Such a liberal point of view, if it had been expressed by his great-grandfather of the same name when president of Harvard a hundred years earlier, would probably have caused his banishment from the colony, as it did that of his great contemporary liberal, Roger Williams.[456]

One of the ablest of eighteenth-century pleas for religious liberty in the colonies was an anonymous pamphlet which appeared in 1744, called *The Essential Rights and Liberties of Protestants. A Seasonable Plea for the Liberty of Conscience and the Right of Private Judgment in matters of Religion, without any Controul from Human Authority.* The author—probably the Reverend Elisha Williams (1694–1755), a former president of Yale—says that every Christian should search the Bible and that he "has an unalienable Right to judge of the Sense and Meaning of it, and to follow his judgment wherever it leads him; even an equal Right with any Rulers be they Civil or Ecclesiastical." He adds that the rights of conscience are "sacred, equal in all, and strictly speaking unalienable," and that no power over religious matters could be vested in the civil magistrate.[457]

Another remarkable eighteenth-century statement regarding religious liberty is a letter written under date of August 6, 1759, by the Reverend Ezra Stiles (1727–95), a Congregational minister, long pastor in Newport, Rhode Island, and later president of Yale, who was one of the few really learned men of New England in his day. It seems that Stiles was outraged because the College had declined the offer of Henry Collins, a Newport merchant, of a dozen books for its library on condition of their being deposited there for the free use of students. These books were mostly of a Baptist character but apparently included some deistic works. Stiles wrote protesting to Rector Clap:

> Mr. Collins remarkt strongly on the taking Dr. Clark's Sermons out of the Library: who told him of it I don't know. And I have heard those who are no friends to Clark say, they tho't it had not so generous an aspect in an Academy for Liberal Education. I have been hard put to it to defend it, for it is known to particular persons all over the

Country. The Quakers & Baptists say they read any of our Books, but we prevent our Children reading theirs—and some have retorted and said it is the same principle as that on w^c^ the Romanists keep protestant Books from the pple & from their Universities too. I believe the same reflexion would be made if Baxter's Works, or Calvin's Institutions, or Dr. Twiss, or Dr. Ridgely was to be taken & kept out of the Library. Different men indeed object from different motives, some from the Love of Orthodoxy & some from the Hatred of it, & some from the generous Sentiments of that generous & equal Liberty for which Protestants & Dissenters have made so noble a Stand. It is true with this Liberty Error may be introduced; but turn the Tables the propogation of Truth may be extinguished. Deism has got such Head in this Age of Licentious Liberty, that it would be in vain to try to stop it by hiding the Deistical Writings: and the only Way left to conquer & demolish it, is to come forth into the open Field & Dispute this matter on even Footing—the Evidences of Revelation in my opinion are nearly as demonstrative as Newton's Principia & these are the Weapons to be used. Deism propogates itself in America very fast, & on this Found^n^, strange as it may seem, is the Chh of Engld built up in polite Life. A man may be an excellent Chhman & yet a profound Deist. While public popular Delusion is kept up by Deistical Priests, sensible Laymen despise the whole, & yet, strange Contradiction. joyn it, and entice others to joyn it also.—and they say all priests are alike, we all try to deceive Mankind, there is no Trust to be put in us. *Truth* & this alone being our Aim in fact, open, frank & generous we shall avoid the very appearance of Evil.[458]

This letter and other evidence clearly put Ezra Stiles in the small group of far-sighted men who advocated tolerance in the America of the mid-eighteenth century. Unfortunately those in charge of the College at the time felt that Calvinistic theology and religion were inseparable, and that the best way they could advance the latter was by promoting a rigid orthodoxy and by suppressing all liberal thinking. A partial result was the strong deistic reaction which President Dwight had to combat a generation later.

Some would add Jonathan Edwards (1703–58) to this group of colonial heroes of religious freedom; but this would hardly seem justifiable, for, although, as we shall see, the Great Awakening in which he played so memorable a part actually advanced the cause by laying emphasis on individual religious conviction, by stimulating the growth of dissenting groups, and by asserting the spiritual nature of the Church, yet he was not specifically interested in the cause of religious freedom as such.[459]

We have referred to advocates of religious freedom among New England orthodox ministers. There were also some among the Separatists. Indeed, one of the outstanding contributions to religious liberty in colonial Connecticut was the publication in 1750 by the Reverend Ebenezer Frothingham (1717–1798), a Separatist minister, of a book which took this advanced position:

That religion that hath not authority and power enough within itself to influence its

professors to support the same, without Bargains, Taxes or Rates, and the Civil Power, and Prisons, &c. is a false Religion. . . . Now, if the Religion generally professed and practiced in this land, be the Religion of Jesus Christ, why do they strain away the Goods of the Professors of it, and waste their substance to support it? which has frequently been done. And which is worse, why do they take their Neighbors (that don't worship with them, but have solemnly covenanted to worship God in another place) by the throat, and cast them into prison? or else for a Rate of Twenty Shillings, Three or Six Pounds, send away Ten, Twenty, or Thirty Pounds worth of goods, and set them up at Vendue; . . .[460]

Frothingham published another book in 1767 in which he wrote:

The main Thing I have in View thro' the whole of this Book is free Liberty of Conscience . . . the Right of thinking and choosing and acting for one's self in matters of Religion, which respects God and Conscience . . . for my Readers may see Liberty of Conscience, was the main and leading Point in View in planting this Land and Colony.[461]

This work, which was so radical that it was published without name of place or printer, is believed to have contributed largely to the legislative act of three years later granting some measure of toleration.[462] It has been considered of sufficient importance to have been twice reprinted in recent years, in 1904 and 1932.

Having dealt with those leaders who lived and died in the colonial period, and who by their utterances and actions most advanced the cause of religious freedom, we shall postpone until a later chapter[463] consideration of the great statesmen and their clerical supporters who at the time of the Revolution, and the formation of the government which followed, consummated their work by providing for the constitutional basis of separation of Church and State in the United States. We cannot, however, dismiss the colonial period entirely without a brief reference to the eccentric group known as the Rogerenes.

John Rogers (1648–1721) certainly was an eccentric and in some respects an extremist, but he was a strong advocate of religious liberty and the entire separation of Church and State; therefore he and his followers, who continued to have an influence in their community for over a century, deserve at least passing notice. He was opposed to war and to required military training, to oaths, to ministers supported by the State and even to a paid or "hireling ministry," to slavery, and also to Sunday laws which hampered freedom. In all these respects he opposed, because of religious scruples, the policies of the State. He also was a strong temperance advocate, a supporter of women's emancipation, a believer in faith cure in opposition to medicines, a strong supporter of immersion, and a defender of the Quakers and the Baptists—two sects not in the favor of the State.

Rogers' life was all spent in and around New London, Connecticut. He was arrested and imprisoned on several different occasions for his frankness in opposing the policy of the established Congregational Church, and spent several years in jail. From our standpoint, the important thing is that he and the Rogerenes—who around 1676 were considered a fairly distinct sect—though maintaining obedience to the civil government in all ordinary civil matters, declined to do so when such obedience compromised conscience or religious convictions, as in connection with paying the regular rates for ministerial support. As to freedom of conscience, he wrote:

God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in any thing contrary to his word, or not contained in it: so that to believe such doctrines, or to obey such commands out of conscience, is to betray true liberty of conscience; and the requiring an implicit faith and an absolute and blind obedience, is to destroy liberty of conscience and reason also.[464]

These were brave words to be written in 1721.

The author of his sketch in the *Dictionary of American Biography* says that "If his character had not been consistently blackened by orthodox historians, he would be remembered as a pioneer of religious freedom."[465]

In 1708, when the General Court enacted a law allowing

those "who soberly dissent" to worship in their own way, "without any let, hindrance or molestation whatever," provided it be well understood that none are excused from paying their full share towards the maintenance of the Congregational and Presbyterian ministry, and that those who desire the liberty of worshipping in other than the Congregational or Presbyterian way, shall "qualify themselves at the County Court, according to an Act, made in the first year of the late King William and Mary, granting liberty of worshipping God in a way separate from that by law established.[466]

John Rogers and the Rogerenes declined to qualify under the law, in this respect differing from Baptists, Episcopalians, and Seventh Day Baptists. These built meetinghouses and held their services in peace, but as the law involved the support of the Established Church the Rogerenes preferred to suffer molestation and persecution rather than accept its provisions.

Rogers felt so strongly about all matters of religious freedom that the tradition was handed down in his family for generations. For instance, his son, John Rogers, 2d, stated:

Forasmuch as we acknowledge the worldly government to be set up of God, we have always paid all public demands for the upholding of the same, as Town Rates and County Rates and all other demands, excepting such as are for the upholding of hireling ministers and false teachers, which God called us to testify against.

Now when the worldly rulers take upon themselves to make laws relating to God's worship, and thereby do force and command men's consciences, and so turn their swords against God's children, they then act beyond their commission and jurisdiction.[467]

These same views were expressed in his reply to Isaac Backus, another advocate of religious freedom, but one who was less radical in his methods.[468]

. . . Here I think he [Backus] does the government no honor by informing the world that they have made laws to debar such as differ from them in matters of religion the liberty of the king's highway to pass to their own meetings, since our lord the king hath granted equal liberty of conscience to all dissenters to hold their meetings and serve God according to their consciences. . . .[469]

John Bolles (1677–1767), who was one of the early disciples of John Rogers, Sr., was perhaps the most conspicuous writer of the Rogerenes on the subject of religious liberty. Among his works were *Good News from a Far Country,* the purpose of which was to prove that the officers of the civil government "have no authority from God to judge in cases of Conscience"; and tracts entitled *True Liberty of Conscience is in Bondage to no Flesh,*[470] and *To Worship God in Spirit, & in Truth, is to Worship Him in the True Liberty of Conscience. . . .*[471]

In a communication opposing the Massachusetts plan of enforcing the acceptance of a creed he wrote:

Thus it is sufficiently proved that God hath set up the Civil Government to rule in the Commonwealth, in temporal things; and as well proved that he hath not committed unto them the government of his church. I have proved that the Civil Government as they exercise their authority to rule only in temporal things are the ministers of God, and that God hath not committed to them the government of his Church, or to meddle in cases of conscience. . . .[472]

It is interesting to note that a descendant of Bolles, as well as a kinsman of Rogers, was Frederick D. Bolles, who established in 1817 the *Hartford Times,* for the express purpose of promoting the cause of toleration in Connecticut.

Section 4. THE MAJOR COLONIAL INFLUENCES ENCOURAGING RELIGIOUS FREEDOM

As the decades of the last half of the eighteenth century succeeded one another the break with England seemed more and more likely. The Revolution really began some years before the opening of hostilities. The refusal to observe the British proclamation of 1763 forbidding the Atlantic slope colonies to make settlements west of the watershed; the beginning of the Committee

of Correspondence by New York in 1764; the Stamp Act of 1765, followed by the Stamp Act Congress; the Townshend Acts of 1767 to raise revenue on colonial imports; the growing protest, North and South, against grievances, from 1768 on; the Boston Massacre of 1770; the Boston "Tea Party" of 1773; the calling of the first Continental Congress in 1774—these all heralded the coming storm. John Adams (1735–1826) pointed out that the Revolution preceded the war and that religious factors played an important part in it. Under date of February 13, 1818, he wrote to the editor of *Niles' Register:*

The American Revolution was not a common event. . . . But what do we mean by the American Revolution? Do we mean the American war? The Revolution was effected before the war commenced. The Revolution was in the minds and hearts of the people; a change in their religious sentiments of their duties and obligations. While the king, and all in authority under him, were believed to govern in justice and mercy, according to the laws and constitution derived to them from the God of nature and transmitted to them by their ancestors, they thought themselves bound to pray for the king and queen and all the royal family, and all in authority under them, as ministers ordained of God for their good; but when they saw those powers renouncing all the principles of authority, and bent upon the destruction of all the securities of their lives, liberties, and properties, they thought it their duty to pray for the continental congress and all the thirteen State congresses, &c.

There might be, and there were others who thought less about religion and conscience, but had certain habitual sentiments of allegiance and loyalty derived from their education; but believing allegiance and protection to be reciprocal, when protection was withdrawn, they thought allegiance was dissolved.[473]

Let us turn from this "radical change in the principles, opinions, sentiments, and affections of the people," which Adams calls "the real American Revolution," to some of the factors responsible for it which had a special influence on the growth of religious freedom.[474]

(1) MIGRATION OF THE COLONISTS, THEIR BACKGROUND, AND RESULTING DIVERGENT SECTS

We might well take as a text for this section certain remarks of an Anglican clergyman, distinguished as a geographer, historian, and one of the chief "adventurers" in the South Virginian Company, Richard Hakluyt (1552?–1616). Writing in 1584, he intimates that the colonization of America will ultimately aid the cause of religious freedom.

Wee shall by plantinge there inlarge the glory of the gospell, and from England plante sincere religion, and provide a safe and a sure place to receive people from all parts of the worlde that are forced to flee for the truthe of Gods worde.[475]

There are many contemporary statements showing clearly the part played

by this desire for personal religious freedom in influencing colonization. A striking example was that of Samuel Gorton (1592–1677), one of the early settlers (1639) of Portsmouth, Rhode Island. He was a conscientious nonconformist of a very independent type of mind who caused even Roger Williams some difficulties. As to his reasons for leaving England, he wrote:

> I yearned for a country where I could be free to worship God according to what the Bible taught me, as God enabled me to understand it. I left my native country to enjoy liberty of Conscience in respect to faith toward God and for no other end.[476]

This major purpose, as it was thought of by the leaders of New England, is thus expressed in the opening paragraph of *The Articles of Confederation of the United Colonies of New England* as adopted in 1643 and in force for forty years: "Whereas we all came into these parts of America with one and the same end and aim, namely, to advance the Kingdom of our Lord Jesus Christ and to enjoy the liberties of the Gospel in purity with peace. . . ." Indeed, one of the main expressed purposes of the confederation was "for preserving and propagating the truth and liberties of the Gospel. . . ."[477]

There were undoubtedly many other factors which encouraged early American settlement. Some modern historians have emphasized the economic note, that is, the desire for improving financial conditions, and especially for securing land of their own; others have been impressed with the struggle for national ascendancy in America because of its effect on the balance of power in Europe, especially the curbing of Catholic Spain and France—a movement encouraged by the British government; others call attention to the desire of large groups of middle-class people to get away from conservative restraints, and to improve their social status by leaving countries where class lines were still fairly rigid. The reasons for making the long journey were indeed many and varied. Some were appealed to by the love of change and of adventure, and generally speaking because the idea of a new world meant a new economic opportunity, especially as available good land in the old countries was scarce; still others hoped to escape political oppression, including some of the burdens of supporting reactionary governments in the old lands, with heavy taxes, military service, and other burdens.

These and other factors, social, economic, political, all played their part, and yet the fact remains that the religious factor, at one time so exclusively emphasized and so exaggerated as to produce a reaction, is beginning again to receive due attention. This means that one of the prime causes for early migration to America, and especially to New England, was the desire for religious freedom.

This does not mean that there were many among the colonists who held convictions as to the rightness of religious freedom per se, but rather that they wished to escape from what they believed to be ecclesiastical tyranny, as far as the treatment of their own sect or denomination was concerned. Members of various Protestant groups wished to avoid persecution or hampering regulations for themselves; yet they might be found to turn around on arrival in America and persecute their old enemies or opponents, whether these were Roman Catholics, Anglicans, or adherents of some dominantly Calvinist body. There were also group migrations based on common religious bonds where some nonconformists, such as the Mennonites, came over in communities so as to have freedom to develop their own religious and social convictions. It is, then, well for us early in this study of religious freedom in America to realize that it had its roots three hundred years ago in the desire of tens of thousands of settlers to free themselves and the religious group to which they belonged from State interference hampering their free development. This factor, as we shall see later,[478] also played an important part in twentieth-century immigration, especially on the part of the Jews of Eastern Europe, and the people of Ireland; cases in which economic, religious, and political elements were all combined.

We must also remember that the founders of the American colonies were, relatively speaking, largely political liberals and religious nonconformists, at least in so far as dissatisfaction with European conditions was concerned. Professor Sweet, in calling attention to this, quotes Cotton Mather's statement in 1667: "There never was a generation that did so perfectly shake off the dust of Babylon, both as to ecclesiastical and civil constitution, as the first generation of Christians that came to this land for the Gospel's sake."[479] Mather was speaking primarily of the early English immigration, but what he said was even more true of the West European migration which followed 1660 and which included so many German sectaries with Anabaptist backgrounds—Mennonites, Moravians, Quakers, and so on. Different colonies also had their distinctive religious and ecclesiastical flavor due to the dominant point of view, such as that of the Puritans in Massachusetts or of the Anglicans in Virginia; but there were probably more different religious backgrounds than have been generally recognized. The Beards in *The Rise of American Civilization* have put this point of view effectively by stating that ". . . English statesmen opened the gates of their American colonies to every kind of religious faith that the stirring life of the Old World could nourish."[480] This meant that there were elements in the colonies which in time would oppose the historic union of Church and State and advocate religious freedom. There were a few such lib-

erals even in Massachusetts; but most of the very pronounced ones migrated to Rhode Island, where they had entire freedom of conscience, or to some of the middle colonies, such as Pennsylvania, where they had it in large measure.

Calvinism, with the "infallible" Bible which the colonists carried with them, was too firmly intrenched, especially in New England, to have liberalism show itself prominently in the field of theology. But they were separated by two thousand miles of sea from the center of government, and communication was irregular and slow. It was inevitable that they would break away from the conservative traditions of government to which they were accustomed, and from whose extremes they fled, to try something new, although this would not involve a departure from Calvin's principle of some partnership between Church and State. The simple character of colonial life in most sections outside of the few large towns and the plantation South added its influence, as did also the democratic ideal of brotherhood in the New Testament. For instance, John Wise, the pastor of Ipswich, emphasized this point in his two books *The Churches' Quarrel Espoused* (1710) and *The Vindication of the Government of the New England Churches* (1717). He asserted that "Democracy is Christ's government in Church and State"; that "Power is originally in the people"; and further that "by natural right all men are born free." This democratic philosophy was not only to influence the affairs of the Church, but fifty years later (1772) Wise's books appeared in a new edition, and played their part in the political discussions and decisions of the time.[481]

The fact that immigration to the United States in the colonial period and the period when our government was being formed was mainly English was of great importance from the standpoint of religious freedom; for although England retained a State Church she increasingly, after the Revolution of 1689, when the Act of Toleration was issued, practiced a considerable measure of toleration. Great masters of English prose from the days of Milton through Addison and Burke were not bigots, and many were themselves advocates of religious liberty. When we compare the conditions in England, for instance, with those in the Latin countries of Europe up to the time of the French Revolution, we can see how much more freedom came to America as a result of our Anglo-Saxon tradition, than would have come had our tradition been dominantly Latin. It is worthy of note that every one of the seventeen founders of American religious liberty whose achievements we have recorded was of British stock. This is highly significant, for England, in spite of its Established Church, developed in the eighteenth and early nineteenth centuries a larger percentage of men of standing and influence who were supporters of religious tolerance than any other European country except Holland. Fortunately, Holland also greatly influenced the United States, partly by the stay of the Pilgrims there,

and partly by its large influence in New York and New Jersey, where the Dutch Reformed Church was powerful.

Edmund Burke (1729–97) well summed up the ideal of freedom which the British colonists shared:

"First, the people of the colonies," he said in Parliament, in his great speech on conciliation with America, March 22, 1775,

> are descendants of Englishmen. England, Sir, is a nation which still, I hope, respects, and formerly adored, her freedom. . . . The people are Protestants, and of that kind which is most adverse to all implicit submission of mind and opinion. This is a persuasion not only favorable to liberty but built upon it. . . . the dissenting interests have sprung up in direct opposition to all the ordinary powers of the world, and could justify that opposition only on a strong claim to natural liberty. . . . All Protestantism, even the most cold and passive, is a sort of dissent. But the religion most prevalent in our northern colonies is a refinement on the spirit of the principle of resistance: it is the dissidence of dissent, and the protestantism of the Protestant religion. This religion, under a variety of denominations agreeing in nothing but in the communion of the spirit of liberty, is predominant in most of the northern provinces. . . .[482]

It was in this same address that, bearing in mind the independence of the American in the matter of religious views and denominational affiliation, he made the classic remark that in the colonies every man's hat was his church.

The factor of experience of European persecution must also be taken into account as a stimulus to religious freedom in this country. People who have suffered for their views naturally want freedom to express them, and the large majority of pre-Revolutionary settlers in America—except in some parts of the South—had been members of reluctantly tolerated or actively persecuted groups abroad. For instance, the English Puritans had been persecuted in the period prior to the Civil War in 1642; so had the Roman Catholics, whose disabilities continued nearly two centuries longer. The French Huguenots, who came over in considerable numbers and represented one of the very finest groups in our population, had suffered greatly in France after the Revocation of the Edict of Nantes in 1685. The English Quakers and the Baptists had been oppressed in England at various times; and so on. A full list of these persecutions would be a large one, but for our purpose the important thing to remember is that the persecuted groups became to a large extent the leaders in behalf of religious freedom in the new land.

This did not apply largely to Roman Catholics, for relatively few of them left England for America prior to the Revolution. Their emigration would not have been encouraged by many of the leaders in the colonization of the new world, other than the Calverts. From the British government's standpoint an object always in mind was a desire to prevent Roman Catholicism, especially

as early represented by the Spanish, and also later by the French, from getting the upper hand in North America.

It was the small disestablished groups, especially Quakers and Baptists, that were destined to render the largest service to the cause of religious freedom in this country. The Establishments, particularly the Episcopal Church in the South and the Congregational Churches in New England, were generally opposed to religious freedom, believing that the cause of religion and morality was wrapped up with the interests of the State-Church. It should be remembered, however, that those who opposed them, whether they were Episcopalians in the North, or Presbyterians in the South, or Quakers, Mennonites, Baptists, or others, though willing to unite to overcome establishment, were divided in many other respects.

This variety of sects with differing European backgrounds was a potent factor in bringing about religious freedom in America. It was increasingly realized that peace and harmony could be secured in the colonies only if all religious groups were tolerated, and later this idea of universal toleration grew, especially in Rhode Island, Pennsylvania, and Virginia, into the idea of religious freedom. Professor Herbert L. Osgood, in his work *The American Colonies in the 18th Century,* saw clearly this influence of the large differentiation of denominations as a factor in producing religious liberty. He says that the "perpetual conflicts between sects" were in the long run "sure to tell in favor of liberty."[483] Some of the fathers of the Republic, such as Jefferson and Madison, anticipated this realization. Indeed, it goes back at least to Voltaire. He put the matter extremely and bluntly but with much truth. In his *Lettres sur les Anglais,* he said: "If there were one religion in England, its despotism would be terrible; if there were only two, they would destroy each other; but there are thirty, and therefore they live in peace and happiness."[484] He tells us that he based this conclusion, not on the natural tolerance of the English people, but on a study of the intolerance of various groups including Anglicans and Scotch Presbyterians!

(2) SMALL PERCENTAGE OF CHURCH MEMBERS IN THE COLONIES

The church leaders in the colonies, especially in early New England, took their religion so seriously that we are inclined to overestimate the church devotion of the majority of the population. Even in the earliest days, a majority of the colonists, in spite of the religious objectives stated by their leaders, were probably actuated mainly by economic considerations. The actual Founding Fathers were to a large extent men to whom religion and the right to worship God according to the dictates of conscience made a tremendous appeal. And we cannot be too thankful to the earnest ministers and laymen who gave a

religious note to most of the early settlements. But, as we have come to understand better in recent years, there were in almost all the colonies some adventurers and former prisoners, as well as indentured servants, contract laborers, artisans, and a few indifferent intellectuals, to whom the religious appeal was a secondary matter. After the first generation with its heroic qualities died off, and the impulse for converting the Indians waned, and ecclesiastical rigidity and avid theological controversy dried up the sources of religious vitality, the number of active church members was almost everywhere very small.

This was particularly true after 1662, when the synod confirmed the Halfway Covenant compromise adopted by the Ministerial Convention of 1657. By this agreement a halfway church membership was provided for those descendants of the first generation of New England church members who made merely a public profession of willingness to be guided by Christian principles and to bring up their children in the fear of the Lord. But such persons were not considered in full communion. They could not partake of the Lord's Supper, and could not vote in church elections.[485]

The colonial nonchurch membership was naturally a relatively liberal group and not interested in maintaining a State Church. The importance of this factor in bringing about the separation of Church and State in America has not been adequately realized. Recent scholarly investigations have shown only 3,105 congregations[486] of all churches at the close of the colonial period. This figure is to be compared with the population in 1780 of 2,781,000 people.[487] In other words, there was only one church to about nine hundred people, and as the population was dominantly rural and scattered, and as means of transportation were extremely poor, it may be seen that it was difficult for most churches to reach a majority of the population. In comparison with authoritative recent figures—those prepared in 1939 for the Federal Council of Churches, when there were 248,410 churches[488] in a population of about 125,000,000, or one to every five hundred people—it will be seen that America today demands and provides a larger proportionate number of churches in spite of the greatly improved roads and means of transportation. Furthermore, the number of churches and the percentage of church members is still on the increase.

The contrast with the close of the colonial period is striking. Professor Sweet's studies have led him to the conclusion that at that time New England, the best-churched section of the thirteen colonies, did not have more than one church member to every eight persons in the total population.[489] Another authority, writing of a slightly earlier period in New England—the end of the seventeenth century and the beginning of the eighteenth, or say fifty years before the Great Awakening—does not think that over one out of twenty or twenty-five New Englanders belonged to the churches, which "scarcely touched

the life of the common people, even after the adoption of the liberalizing Halfway Covenant."[490] In comparison with these figures even the incomplete census returns of 1936 showed over fifty million members of Christian churches or something over 40 per cent.[491]

These typical facts and figures are sufficient to show that nonchurch members at the time our state and national constitutions were being formed were in a large majority, and that it was quite natural that they should take a view in opposition to any organic connection between Church and State.

(3) EXPERIENCE WITH AND WITHOUT ESTABLISHMENTS

Nothing had a larger effect on the framers of our Constitution and Bill of Rights than colonial experience as well as experience during the Revolutionary period, when the states were being formed. Most of the features of Church–State separation and of religious freedom can be traced back in the colonial period to the achievements of Roger Williams in Rhode Island and of William Penn in Pennsylvania, and in the state period to the achievements of Virginia and New York in securing virtually complete religious freedom and entire separation between Church and State. These factors are discussed elsewhere at some length.[492] Furthermore, those colonies which had an Established Church, although that Church had much support from its adherents, had developed a strong opposition party, made up in the South of nonconformists, as far as Anglicanism was concerned, and in the North of nonconformists who opposed the special privileges of the Congregational establishment. It was clear to the great majority in the Constitutional Convention of 1787 not only that the Federal government must have no Church-State connection, but that such connection would gradually disappear in the various states, although the new government could not go too far or too fast in definitely aiding this movement.

Any impartial person who knew the conditions in an American colony with an Established Church well knew the difficulties. He might wish to maintain his Church in his own colony in spite of these, but when it came to legislating for the nation starting under a new republican form of government he could but see the need of a change. In such states as Massachusetts with its intrenched Congregationalism there had been an increasingly persistent and bitter struggle. The "outs" were constantly agitating publicly and petitioning the legislatures to give up tithes and other forms of taxes for the support of the establishment, and to grant them entire freedom before the law for their work. Indeed, a good many cases had come before the courts where individuals—often on conscientious grounds—had declined to support the Established Church, and the dissenters were steadily increasing their demands. If such was the condition in a

relatively homogeneous state, what would it be in the nation at large if an establishment of religion were attempted? It was quite obvious that with all the extreme dissenting German sects in Pennsylvania, the Dutch Reformed and Presbyterians in New York, the Roman Catholics in Maryland, the Episcopalians in Virginia, the Quakers in Rhode Island, the Jews in a few cities like New York, Charleston, and Newport, and the vigorous Baptists expanding along the Appalachian frontier and stirring up trouble for establishments everywhere, a national State-Church was out of the question.

Furthermore, four of the original thirteen colonies—notably Rhode Island and Pennsylvania—had secured and experienced religious freedom with entire separation of Church and State, and found that it actually worked well. The former, under the inspiring influence of Roger Williams, the most forward-looking thinker in the field of religious liberty of colonial America, had pointed the only sure way to peace, effectiveness, and safety for both "powers." It was, as we have seen in the sketch of his life, to separate Church and State entirely. The object lesson of Rhode Island's experiment in New England, the success of Pennsylvania, with its closely related Delaware, in the Middle States, of Maryland's early efforts under Cecil Calvert, and of Virginia's recent victory in the South, were bound to make the framers of the Constitution appreciate the importance of religious freedom and guard against any Federal Church for the United States. The Founding Fathers sensed full well that any other solution would be inconsistent with the principles of independence and democracy. But they did not feel like treading on dangerous ground where feelings were strong, by insisting at the time on such separation in the various states which originally formed the American union.

The influence of the Presbyterian colonists in this matter of opposing establishment must not be overlooked. As Sweet has emphasized, the Presbyterian Church was a State establishment in Scotland, but in North Ireland it was a dissenting body. These Irish dissenters, believing that the Established Church was largely responsible for their civil and religious disabilities, brought with them to the New World a hatred of Church establishments in general and of bishops in particular.[4103] It was among these Scotch Irish Presbyterians that much of the strongest support for religious freedom came in this country.

(4) OPPOSITION TO ENGLISH BISHOPS WITH STATE CONNECTIONS

Many historians have dealt with the problem of the episcopate in America, primarily from the standpoint of the need of the Episcopal Church for bishops to supervise and stimulate the work of the churches and to ordain candidates for the ministry. It is true that there was such a need and that it should have been met before the middle of the eighteenth century; but there was another

side—that is, the opposition on the part of people in the colonies who were not Episcopalians, and even of some Episcopalians themselves, to inviting bishops to America. This was due partly to a fear of the introduction of "prelacy," and probably even more to political considerations. It is with the latter that we must deal here, for although it would seem in the interest of religious freedom to allow the growing Episcopal Church in the colonies to have one or more bishops, the agitation to effect this purpose stimulated the opposition of many groups on account of the close historic connection in the English tradition between bishops and the State. The fact that Anglicanism was a State religion in England, that bishops held seats in the House of Lords, and that the State had the final decision in their naming, were all factors that could not be overlooked. People feared that if bishops were introduced into the colonies with the assurance that they were purely for Church and religious purposes, they would in time, owing to English traditions and to their social influence, get their Church involved with the State and its problems. This, they believed, would endanger Congregationalism and Presbyterianism, and might even prove an opening wedge for the Church of Rome. The full-fledged Protestant mind was suspicious that the Reformation had been only partly successful in England, since it had retained episcopacy and the rites and ceremonies of the *Book of Common Prayer*,[494] much of which was based on old breviaries and missals.

The Episcopal Church was nurtured in the colonies by the Society for the Propagation of the Gospel, often referred to as the Venerable Society. Furthermore, owing to the urging by Archbishop Laud (1573–1645) that measures be adopted to try to bring about conformity among British colonial subjects, the Bishop of London was given jurisdiction over them by the Privy Council. Later, when Henry Compton (1632–1713) was Bishop of London, to which he was transferred from Oxford in 1675, the colonial governors were instructed that no minister or teacher should be received in the colonies without a certificate from him.[495] In 1689 he began the plan of appointing commissaries to represent him in the work of supervision, a decision which was to prove helpful. James Blair (1656–1743), a missionary in Virginia, was his first representative, and the second was Thomas Bray (1656–1730), who, though he remained in Maryland only a short time, did much for the improvement of church conditions. He was mainly responsible both for the Society for Propagating the Gospel in Foreign Parts, chartered in 1701, and the Society for the Promotion of Christian Knowledge, founded the same year.

In spite of the close connections with England, the Anglican Church was established only in some Southern colonies and in parts of the states of what we now call the Middle Atlantic division; but even in these the establishment

brought with it no adequate or permanent revenues, and the taxation for its support caused much friction. Outside of a few places such as the eastern portions of Virginia, South Carolina, and New York, it was an unpopular minority group. Speaking generally, it was most vigorous, although relatively small, in places like Connecticut, where it had no establishment.

The attempt to secure bishops went back to an early date. In 1638 Archbishop Laud had himself set on foot a plan for sending a bishop to New England, and the Society for the Propagation of the Gospel had submitted a memorial on the subject to the queen in 1709 and on several later occasions. One specific proposal was that there should be four bishoprics, two in the "Islands" —that is, the West Indies—and two in the continental colonies, with locations at Burlington, New Jersey, and Williamsburg, Virginia.[496]

There were also from time to time bequests and gifts toward the support of a bishop, and in 1750 a definite effort was made, with the aid of several important English bishops, to advance the project. The Right Reverend Joseph Butler (1692–1752), Bishop of Bristol and author of *The Analogy of Religion,* prepared a statement to allay suspicions. This is interesting. It declared that no coercive power was desired over the laity, but only over the clergy; that no share in the temporal government was wanted for bishops; that their maintenance was not to be at the charge of the colonies; and that no bishops were to be sent to reside in places, such as New England, where the government was in the hands of what from the English standpoint would be called "Dissenters," but that in these last-named cases they would visit only to ordain and confirm, and to discipline clergy.[497] But it was now too late. The political factors developed in the middle of the century made it impossible to carry out a plan which could have been put into effect without serious difficulty a generation earlier.

Three or four incidents will show the fears of many American patriots with reference to securing American bishops.

Several decades before independence the Bishop of London authorized the clergy of Maryland to nominate one of their number to serve as his suffragan. They selected a Reverend Mr. Colebatch, who seems to have been well qualified for the position, to go abroad to receive the necessary consecration in England. There was, however, extreme opposition in the colony. The legislature interfered and forbade the nominee to leave the province, a writ of *ne exeat* being issued to prevent the carrying out of the plan.[498]

After the peace of 1763, when the Congregationalists of New England were much stirred up on the subject of the possible appointment of Anglican bishops in their territory—a proposal which a historian of the period says agitated them as much as the Stamp Act—Charles Chauncy (1705–87), one of their most lib-

eral and effective ministers, spoke out frankly. Denouncing the proposal, he said that

> our people would not be easy, if restrained in the exercise of that "liberty wherewith Christ has made them free"; yea, they would hazard every thing dear to them, their estates, their very lives, rather than suffer their necks to be put under that yoke of bondage, which was so sadly galling to their fathers, and occasioned their retreat into this distant land, that they might enjoy the freedom of men and christians.[499]

He viewed the proposal with grave concern from the point of view both of Church and State, and became the leader of the opposition to bishops in New England, giving his deliberate views on the subject in his critical *Compleat View of Episcopacy,* published in 1771.

Again in 1767 the Reverend Dr. Thomas Bradbury Chandler of Elizabethtown, New Jersey, one of the most active and respected of American Episcopal clergymen, issued his *Appeal to the Public in Favor of the Church of England in America.* The press of New York, Boston, and Philadelphia was aroused, and public communications appeared, attacking the Church and its plans. Letters show that the opposition was due mainly to fears of possible political influence and State entanglement of bishops. President John Adams (1735–1826) brought this point out clearly in a letter that he wrote in 1815 regarding conditions at about this time:

> Where is the man to be found at this day, when we see Methodistical bishops, bishops of the Church of England, and bishops and archbishops and Jesuits of the Church of Rome, with indifference, who will believe that the apprehension of Episcopacy contributed, fifty years ago, as much as any other cause, to arouse the attention, not only of the inquiring mind, but of the common people, to close thinking on the constitutional authority of Parliament over the colonies? This, nevertheless, was a fact as certain as any in the history of North America.[500]

Adams further explains that "The objection was not merely to the office of a bishop, though even that was dreaded, but to the authority of Parliament, on which it must be founded. . . ."[501] He emphasized the point that the settlers of New England had come over to secure both civil and religious liberty. One of his major reasons for opposing the British government's power to tax the colonies was his fear that it might lead to their establishing the Church of England in North America: "if Parliament could tax us, they could establish the Church of England, with all its creeds, articles, tests, ceremonies, and tithes, and prohibit all other churches, as conventicles and schism shops."[502]

The Massachusetts House of Representatives, in a long letter written to Dennis DeBerdt, its London agent, on January 12, 1768, protesting against certain recent acts of Parliament, included this statement:

. . . The establishment of a Protestant Episcopate in America is also very zealously contended for: And it is very alarming to a people whose fathers, from the hardships they suffered under such an establishment, were obliged to fly their native country into a wilderness, in order peaceably to enjoy their privileges, civil and religious: Their being threatned with the loss of both at once, must throw them into a very disagreeable situation. We hope in God such an establishment will never take place in America, and we desire you would strenuously oppose it. The revenue raised in America, for ought we can tell, may be as constitutionally applied towards the support of Prelacy as of Soldiers and Pensioners: If the property of the subject is taken from him without his consent, it is immaterial, whether it be done by one man or five hundred; or whether it be applied for the support of ecclesiastick or military power, or both. . . .[503]

Samuel Adams represented the colony in communicating this action.[504]

The non-Episcopal churches were quite as disturbed over the threat of bishops as the colonial governments. From 1766 to 1775 the General Association of the Congregational pastors of Connecticut and the United Presbyterian Synod of New York and Philadelphia combined in a plan of union "for preserving their religious liberty." The defeat of the American episcopate proposal was one of their major purposes. They believed this necessary to maintain their own independence, being well aware of the influence of English bishops in securing the disallowing of laws favorable to dissenters in certain colonies.[505] A letter appended to their records says:

Nor do we envy the Episcopal churches the privileges of a bishop for the purposes of ordination, confirmation, and inspecting the morals of their clergy, provided they have no kind of superiority over, nor power any way to affect the civil or religious interests of other denominations. . . . It is alleged that no other than the above-hinted moderate episcopacy is desired or designed; yet should it not be fixed by parliamentary authority, we have no security that matters will be carried no further. . . . Gentlemen acquainted with the law inform us that a bishop is a public minister of state, known in the common law of England. . . . Might he not plead . . . that the common law of England is his birthright, and that the laws in force before the settling of the colonies were brought thither and took place with the first settlers? What is to hinder him to claim all the powers exercised by Archbishop Laud and his ecclesiastical courts? . . . A covetous, tyrannical, and domineering prelate, or his chancellor, would always have it in their power to harass our country, and make our lives bitter by fines, imprisonments, and lawless severity.[506]

In 1768, at their convention in Elizabethtown, another letter was presented and approved which shows how real were their fears:

It is very evident it is not that harmless and inoffensive bishop which is designed for us, or the missionaries among us request; and therefore we cannot but be apprehensive of the danger from the proposed episcopate, however plausible the scheme may be

represented. We all know the jealousy of the bishops in England concerning their own power and dignity suffering by the example of such a mutilated bishop in America; and we also know the force of a British act of Parliament, and have good reason to dread the establishment of British courts among us. Should they claim the right of holding these courts, and of exercising the power belonging to their office by the common law of England (which is esteemed the birthright of a British subject), we could have no counterbalance to this enormous power in our colonies, where we have no nobility or proper courts to check the dangerous exertions of their authority; and where our governors and judges may be the needy dependents of a prime minister, and therefore afraid to disoblige a person who is sure to be supported by the whole bench of bishops in England: so that our civil liberties appear to us to be in immediate danger from such an establishment.[507]

Opposition to the establishment of bishops and determination to retain and enlarge such religious freedom as they possessed led the one Baptist and two Presbyterian ministers of New York City in 1769 to form the "Society of Dissenters." They were aided by some well-known laymen, William Livingston, John Morin Scott, Peter Van Brugh Livingston, and others. The record of their first meeting shows their purpose:

Whereas it is of the utmost Importance for the different Christian Denominations in the Country, not belonging to the Church professing themselves to be in Communion with the Church of England, to unite together for the preservation of their common and respective civil and religious Rights and Privileges, against all Oppressions and Encroachments by those of any Denomination whatsoever; it is thought proper for that purpose, to form a Society for taking Care of the said common and respective, Civil and Religious Rights and Privileges, of those of their Brethren in the Colony of New York, and the Neighboring Colonies, who do not profess to belong to the said Church, professing themselves to be in Communion with the Church of England. . . .[508]

They decided to concentrate on this object and to avoid any "Acts or Conversation" regarding "Matters of Doctrine, Church Discipline, or Worship." They also arranged for a standing committee for correspondence to create interest in New York "and the neighboring colonies."[509] Little is known of the actual activities of the society, but on February 28, 1769, the committee reported the draft of a letter to be sent to such correspondents as the society might think proper. The letter begins with this statement of the importance of religious liberty:

As civil and religious Liberty is justly esteemed amongst the greatest of human Blessings, the loss of which must necessarily be attended with the most complicated misery, it cannot be doubted that its preservation merits our most vigorous Efforts. No man duly sensible of its inestimable Value, but will acknowledge it our indispensable Duty, by every lawful means to preserve it to ourselves and transmit it to Posterity.[510]

The dissenters then turn with much spirit to their major theme: opposition to the introduction of bishops into the American colonies. Their argument shows accurately the feeling of the time regarding what was considered a highly important Church–State issue. "The History of all ages," says the statement,

furnishes abundant and melancholy proofs, that even the best of men (such is the pride and ambition of human nature) have too frequently abused an undue share of power; and that it is therefore an Argument of the Wisdom, as well as productive of the Happiness of a People, to preserve a just Ballance in the different branches of Government, both civil and religious: And though it is well known that most of our Colonies have hitherto held their privileges in tollerable security; Yet no one who is properly sensible of that important Blessing, can help being alarmed at the Attempts lately made by many of the Episcopal Clergy, and some of their Laity, to introduce Bishops into America. They have not only planned their Scheme, but have pursued it as farr as our Watchfulness on this side the *Atlantic*, and the political jealousies on the other would permit. And as we have the utmost reason to fear, that they have not abandoned the project, we ought still to be on our Guard, lest our Inattention should facilitate its accomplishment. Should such be the Event, *how terrifying the prospect!* We should soon be obliged to bid farewell to that religious Liberty, in which CHRIST hath set us free; and instead of that divine Satisfaction which flows from the uninterrupted enjoyment of the Rights of private Judgment, and the Worship of God according to our Consciences, (for which some of our forefathers left their native Country, and took sanctuary in this then uncultivated Wilderness, from the oppression of *Ecclesiastical power*) the introduction of Episcopacy would immediately fill our Hearts with just forebodings of Evil. For it is much to be feared, that so extraordinary and dangerous an Innovation, would sooner or later be attended with such Restraints, impositions and penalties on all Nonconformists as would make Life itself intolerable. The Non-Episcopalians have the greater reason to be alarmed at the Attempt to introduce Episcopacy, when they already see the members of that Church Pursuing measures for ingrossing an inordinate share of power; while themselves, tho ten to one in this Colony, are treated with open Contempt; and publicly told by the warm Advocates of prelacy, that they ought to be tributaries to the Church; nor be suffered to enjoy any post, either of honor, trust, or profit. Our fears are greatly increased, when we consider the Episcopal Church possessed of so immense an Estate in this City; and her members enjoying the Principal part of the wealth of the Metropolis: not that we envy either the Corporation of that Church, or any private member belonging to it, in any part of their Possessions: We only notice their superior riches, as an unfailing Source of Superior influence; an influence sufficient unless opposed by the union of all the other denominations to carry almost every Election here. . . ."[11]

The main body of the letter is given to this attack on the proposed introduction of bishops for the Anglican Church in the colonies. Then follow these clauses:

. . . We do by no means propose to Act Offensively against the Episcopalians, but barely to Counteract them, as far as we shall discover them pursuing designs unfriendly to our General interest. We can with Great Truth and Sincerity declare, that we would not, if it were in our power, deprive that Church of any Enjoyment save only that of Applying our property to her Support, which she does in four Counties in this province; and has in one of them Attempted to Enlarge her establishment: And we have but too much reason to suspect from her unwearied pains and struggles for Power, that it is with a View to Obtain an Ascendancy in the House of representatives, sufficient to enable her to make such establishment General through the province; or to some other designs unfavorable to those of different persuasions. Why else is she not satisfied with her Already disproportionate degree of power before mentioned? We only desire ourselves to enjoy and to transmit to our posterity the right of private Judgment; and of Worshipping God according to the dictates of our own Consciences. For this important purpose, and to Strengthen our interest, we propose to Write to all our brethren on the Continent, to exhort them to form themselves into such Societies, to Correspond with each other on these Interesting concerns; and thereby endeavour the preservation of our Common Liberty. . . .[512]

Even the South with its Anglican traditions was aroused. The Episcopalians of New York and New Jersey, who were leaders in the effort to secure bishops, sent south two of their clergymen, the Reverend Dr. Myles Cooper, president of King's (Columbia) College, and the Reverend Dr. McKean, to obtain Anglican support. In Virginia they arranged for a convocation of the clergy, which was however slimly attended. A majority favored the proposal, but four clergymen, the Reverend Messrs. Henley, Gwatkin, Hewitt, and Bland, entered a protest. This protest was popular in the colony, as is shown by the fact that the House of Burgesses on July 12, 1771, unanimously approved this action in spite of the fact that most of its members were Episcopalians. Let the journal of the House speak for itself:

Resolved, Nemine Contradicente, That the Thanks of this House be given to the Reverend M^r^ *Henley,* the Reverend M^r^ *Gwatkin,* the Reverend M^r^ *Hewitt,* and the Reverend M^r^ *Bland,* for the wise and well timed Opposition they have made to the pernicious Project of a few mistaken Clergymen, for introducing an *American* Bishop; a Measure by which much Disturbance, great Anxiety, and Apprehension, would certainly take place among his Majesty's faithful *American* Subjects; and that M^r^ *Richard Henry Lee,* and M^r^ *Bland,* do acquaint them therewith.[513]

An early Virginia historian, John Wilson Campbell (1782–1833, whose *History of Virginia to 1781* appeared in 1813, reflects the contemporary opinion on the subject:

Churchmen naturally sided with the English government, and the bench of bishops

were arrayed in opposition to the rights of the Colonies. The protest of the four ministers gave rise to a controversy between them and the United Episcopal Conventions of *New York* and *New Jersey* and a war of pamphlets and newspapers ensued in the Northern and Middle States; and the stamp act itself, according to some writers, did not evoke more bitter denunciations, nor more violent threats, than the project of an episcopate: New England was in a flame against it. It was believed that if bishops should be sent over they would unite with the Governors in opposition to the rights of *America*. The laity of the *Episcopal* Church in America were, excepting a small minority, opposed to the measure. Neither the people of Virginia, nor any of the American colonies, were at any time willing to receive a bishop appointed by the English government. Among the advocates of the scheme the Rev. *Jonathan Boucher* took a prominent part, and he sustained it ably from the pulpit. He held that the refusal of *Virginia* to consent to the appointment of a bishop, was "to unchurch the church," and his views on this subject were re-echoed by *Lowth*, Bishop of *Oxford*, in an anniversary sermon delivered before the Society for the Propagation of the Gospel in Foreign Parts. On this point of ecclesiastical government the members of the establishment in *Virginia* appear to have been looked upon as themselves dissenters. In one sense they were so; but their repugnance was to prelacy, not to the episcopate; a prelatic bishop was in their minds associated with the ideas of expense beyond their means, and of opposition to the principles of civil liberty. *Boucher*, in a sermon that he preached in this year at *St. Mary's* Church, in *Caroline* County, of which he was then rector, says of the dissenters in *Virginia:* "I might almost as well pretend to count the gnats that buzz around us in a summer's evening."

The scheme of sending over a bishop had been entertained more than a hundred years before; and Dean Swift at one time entertained hopes of being made Bishop of *Virginia*, with power, as is said, to ordain priests and deacons for all the colonies, and to parcel them out into deaneries, parishes, chapels, etc. and to recommend and present thereto.[514]

The quoted sermon of Dr. Boucher (1738–1804) also bears testimony to the growing approach of Virginia to New England in conclusions on the subject of colonial bishops:

> And when it is recollected that till now the opposition to an American episcopate has been confined chiefly to the demagogues and independents of the New England provinces, but that it is now espoused with much warmth by the people of Virginia, it requires no great depth of political sagacity to see what the motives and views of the former have been, or what will be the consequences of the defection of the latter.[515]

These evidences are conclusive that during the period which led up to the Revolution there was active opposition in the colonies to bishops on political grounds; an opposition which almost entirely disappeared when the Federal government was established and the colonies were separated from England.

The net result of the agitation was to stimulate the movement which led to independence and the establishment of religious freedom in the United States. This has been clearly brought out in the most important published study of the subject: "If," says Professor Cross, "the question of the establishment of bishops did not contribute a lion's share in causing that enmity to the mother country, it was involved in the struggle and deserves to be regarded as an important part of it. . . . It was at least one of the causes tending to . . . alienation."[516]

We have dealt in this section with the question of Anglican bishops for the colonies, but we have already seen that the Roman Catholic Church was faced with the same problem, and did not dare select a bishop for the same region until 1789.[517]

It must also be added that in some colonies in the South there was a good deal of opposition to bishops on the part of the Anglican clergy mainly because they did not relish the thought of too much general supervision of their conduct. They liked their independence. There were a good many easy-going and some morally lax men among them who feared the effects of close episcopal oversight. The Reverend Samuel Johnson (1696–1772), the honored first president of King's College (Columbia), writing in 1765 to the rector of Trinity Church, New York, bemoans the fact that "the southern clergy, as far as I can learn" are totally averse to bishops. "They are now," he says, "their own masters, quite independent of the people, and therefore do not chuse a Master!" "Besides," he remarks, "its too notorious that no bishop, unless a very abandoned one, would put up with the lives they in general lead. . . ."[518]

(5) EFFECTS OF THE GREAT AWAKENING OF THE MID-EIGHTEENTH CENTURY UNDER WHITEFIELD, EDWARDS, AND OTHERS

One very definite evangelical movement aided the cause of religious freedom just prior to the formation of the Union. This was the Great Awakening in the middle of the eighteenth century.

Its origin was due to two major factors: the middle colonies revival which had its roots in German Pietism and its main early exponent in the Reverend Theodorus J. Frelinghuysen (1691–1748), pastor of various Dutch Reformed churches in New Jersey; and the New England "awakening." The former's work was powerfully aided by the Presbyterian Tennents, father and son; William Tennent (1673–1745), founder of what came to be called the Log College (1726), predecessor of Princeton, which was highly influential in spreading the movement into Pennsylvania and neighboring colonies, and his son, Gilbert Tennent (1703–64), later closely identified with Whitefield's evangelical labors. These efforts did much both for vital religion and for democracy, especially on the frontier, and in some places such as Virginia, as we shall see

later in this section, contributed to overthrowing the domination of the State church. This result was due partly to accessions to nonconformist strength, and partly to the breaking up of the old parish system with its one recognized minister and church with responsibility for nearly all in the community.[519]

The New England movement had its beginnings a few years later, in 1734; but it was probably even more influential, and was identified with the name of Jonathan Edwards (1703–58), the greatest of the Puritans. He was a theologian and a mystic, and cared little about political matters. Yet he contributed mightily—even though indirectly, being far from a liberal in theology—to the cause of religious freedom. This was due to his preaching the importance of individual conversion; his insisting that the Church and the State were very different, and that the Church should be exalted as a spiritual and not a political institution; his effective proclaiming that each individual is answerable to God alone; and his strict theological and ecclesiastical views, which alienated the more liberal who considered a moral life more important than Calvinistic orthodoxy. As a result they tended to leave established Congregationalism for other religious groups more sympathetic with their point of view. The author of the *Rise of Religious Liberty in America,* surveying the late colonial scene, says that "Edwards, far beyond all men of his time, smote the staggering blow which made ecclesiastical establishments impossible in America, but we have no proof that he meant to do anything of the kind."[520] By emphasizing religious conviction and conversion he gave a blow to the temporizing tendencies of the Halfway Covenant and all such expediency church adjustments with society and the State, thus, although himself a conservative, aiding the cause of religious freedom based on personal belief and experience. Edwards' repudiation of the support by his Northampton Church of the Covenant, and his strong Calvinistic preaching of "Justification by Faith Alone," were thus indirectly to encourage the movement for religious liberty.

Furthermore, the Great Awakening weakened the exclusive hold of the established Congregational Church in New England by causing the serious division between the Old Lights and the New Lights. The former opposed the new evangelical movement as emotional, tending to disorder and lawlessness, and alienating many of the more thoughtful members. The latter supported it. The division became so serious that the Connecticut legislature in 1741 approved a proposal to hold at the expense of the colony a "General Consociation of the Churches" to bring about peace and promote "the true interest of vital religion." The resulting convention held in Guilford in November of the same year was the last synod of Congregational Churches called under the auspices of an American commonwealth.[521]

In 1774 the General Association of Connecticut—the organization of the

established Congregational ministers, to whom the Great Awakening had meant much in developing their evangelistic interests—raised funds to send missionaries to "y^e Settlements now forming in the wilderness to the Western and Northwestward."[522] But the Revolution interfered, and effective work was not begun until 1798, when the association organized itself as a missionary society. It then became a factor in the winning of the West for the Christian Church. This was largely due to the great revival of 1797–1805, described in a later chapter.[523]

The Great Awakening profoundly moved all Protestant groups, and prepared the soil for change. In the case of the Anglicans it affected them by reactions from without rather than direct internal influence, in that the extremes of the revival led many to seek the more restrained and orderly worship of the Episcopal Church. It was also effective in putting new life in those dissenting churches in New England upon which the cause of religious liberty so much depended, especially the Baptists, and the Methodist group then included among the Episcopalians. In these churches it was considered as a protest against the deadness of what was virtually state religion, corresponding in this respect to Pietism in Germany and Methodism in England.[524] In the established Congregational Church the stricter new standards strengthened the moral and religious tone of the Church, which had been weakened by the compromising Halfway Covenant, and girded it for new crusades. The Great Awakening increased its membership while at the same time attracting from outside many new members to other churches. On the whole, it was a severe blow to the cause of church establishment.

Edwards' strong ally from England, George Whitefield (1714–70), by his seven visits to America between 1738 and 1770, and especially by his tour of the colonies in 1740, made a profound impression not only in the interest of evangelism but of toleration, as he did not in America identify himself actively with any one religious body and many religious groups united in his services. The degree of his generosity of opinion within the bounds of Protestantism was marked for his time. He and his friend John Wesley (1703–91), Gilbert Tennent (1703–64), and many others influencing and influenced by the Great Awakening and the Methodist revival—movements that found a common bond in Whitefield—were more interested in converting men to Christianity than in upholding any exclusive church claims. With the additional support of these two men the Great Awakening extended widely and became of nation-wide importance as a spiritual and moral revival.

The movement against slavery; the development of a humanitarian interest in many other causes; the bringing of men together in a common movement from different colonies and from different Protestant groups; the encouraging

of democratic ideals; the providing of religion on the frontier; the founding of educational institutions such as Princeton College; and the strengthening of the Presbyterian, Baptist, Congregational, and other Churches, which contributed so much popular support to the cause of the American Revolution—these are among direct and indirect historical influences of the Great Awakening on American civil and religious life.

As this movement had its effective beginnings in New England and has been largely discussed by New England authors, its influence on the South and West has not always been adequately realized. It has, however, been demonstrated that it was a mighty force in other distant colonies. For instance, in Virginia it gave great stimulus through the Baptist and Presbyterian churches to the cause of civil and religious liberty. It aided these movements by pressure from below; opposing all monarchical forms of State and Church control, and encouraging mightily the democratic movement. This influence is brought out clearly in a recent book which describes the contributions of the Great Awakening "to the Rise of Democracy in Virginia"[525] and which has been referred to frequently in the present study.[526]

Professor Gewehr, speaking of the religious movement begun by Jonathan Edwards, and taken up and extended by George Whitefield and John Wesley, says:

> If a study of the rise of dissent in the eighteenth century shows anything, it is the fact that the Great Awakening was one of the secret springs which directed the actions of men and, therefore, was one of the sources of the democratic movement so closely identified with the American Revolution. The evangelical doctrines, when brought to bear upon the great mass of the population, produced a democratic feeling, developed a degree of self-respect, and inculcated ideas of self-government. The very essence of these teachings was to place all men on a plane of exact equality in the Christian Church. Social rank counted for naught with the preachers of the Great Awakening. The Church was open to all alike—to slaves and freemen, to poor and rich, to learned and ignorant—so long as a man professed justification through faith in Jesus Christ. Thus we see in the evangelical groups a great leveling influence at work, which could not fail to have important consequences.
>
> The Great Awakening gave rise to popular forms of church government and thus accustomed people to self-government in their religious habits. The alliance of Church and State, the identification of religious with civil institutions, was found to be detrimental to the cause of religion. . . .
>
> . . . Perhaps unconsciously, but none the less in reality, the Great Awakening gradually welded the common people into a democracy which in the end was to change inevitably the temper, if not the form, of government. . . .[527]

We have emphasized elsewhere the important contribution made by a few liberally minded individuals to the cause of religious freedom, but it must be

remembered that they could have accomplished little without the support they received from religious groups opposed to any Church-State connection. The Baptists, the Quakers, and the Presbyterians were specially prominent in this effort; indeed, without the support of the first two, the enfranchising work of Roger Williams in Rhode Island and of William Penn in Pennsylvania would have been impossible. The Presbyterians, under the effective lead of the Hanover Presbytery, and reinforced by the Baptists, gave Thomas Jefferson equally invaluable aid in Virginia, where the established Episcopal Church was accused of worldliness and of being mainly the church of the landed aristocracy. Dr. Figgis, writing of similar movements in Europe and of the influence of dissenting churches and sects there on the securing of religious freedom, says:

In the seventeenth century it was not the isolated individual but the religious body, the sect with its passionate assertion of its own right to be, which finally won toleration from the State. By himself apart from religious discords the individual would have secured no freedom. The orgy of State-autocracy which set in with the Renaissance and was developed by the Reformation would have gone on unchecked, as, indeed, it did in those States like France or the German principalities in which uniformity in religion was enforced. It was the competing claims of religious bodies, and the inability of any single one to destroy the others, which finally secured liberty. The rights of man were their recognition of the sense of his duties towards God. Political liberty is the fruit of ecclesiastical animosities.[528]

There is truth in this view, but we should prefer to state it positively: religious freedom is due largely to the convictions in matters of faith, conduct, work, worship, and organization strongly held by individuals and groups. The Great Awakening, which did much to stimulate the less conventional churches and the cause of democracy, especially on the frontier, thereby encouraged this movement.

(6) FREEMASONRY

The meaning of the word Freemasonry is disputed. There are two leading theories. The first is that it refers to the freedom or privileges enjoyed by members of the old trade guild of masons; the second, that freemasons were skilled artisans, removed from the control of local guilds and able to travel and render large service when cathedrals or other buildings were in process of construction. Related to the latter is the view that, historically, freemasons were those freed from routine work to do the more important designing, carving, etc. Freemasonry aims to bring about a universal league of mankind which Masons try to exhibit even now on a small scale. They take great interest in the crusades and their significance, and lay much emphasis on the Bible and its historic teachings. Some take the ground that Freemasonry antedates the Jewish and

Christian dispensations, and had its origin in Egyptian, Druidic, and other mysteries. The emphasis on speculative Masonry, that is, a systematic method of teaching morality by means of symbols, derived largely from the Jewish temple ritual and from architecture, goes back to the reorganization of Masonry early in the eighteenth century, when the old Masonic trade lodges had almost ceased to function effectively. This emphasis on symbolism is believed by Masons to preserve the unsectarian unity of Freemasonry along with differences of religion, national feeling, etc., each member being able to interpret the symbols largely in his own way.

The first regular lodge of American Freemasons is believed to have been established in Philadelphia about 1730. It soon died out, but was revived by Franklin in 1749. Lodges appeared in Boston in 1733 and soon thereafter in Fredericksburg, Virginia, where George Washington was initiated, and in other cities, the first Scottish Rite lodge being installed in Albany in 1768. During the generation from its effective introduction in this country to the American Revolution, Masonry gained great strength; and is believed to have been an important factor not only in uniting patriots from different colonies, but in bringing the different Protestant communions, so widely separated in thought and work, into harmonious co-operation, and in general in promoting an interest in the welfare of humanity.

The introduction of Freemasonry into America took place only a few years after the modification and revival of medieval Freemasonry in Europe, generally identified with the lifework of Jean Théophile Desaguliers (1683–1744), a French Huguenot, who was the son of the Huguenot pastor in London. After a notable career at Oxford and as a scientific lecturer of the Newtonian school of thought, he became master in 1719 of the Grand Lodge of England, which had been established two years before. This Grand Lodge was to transform Masonry from a trade union of builders, with theological and ecclesiastic connections, to a broad, humanitarian movement, secret, moral in its purpose, and philosophical in its ideas. In the old lodges of operative Masonry, as distinguished from the new or modified lodges of speculative Masonry, the emphasis was definitely on the Christian tradition. This attitude was summed up in the words of the old ritual "The first charge is this that you be true to God and Holy Church and use no error or heresy."[529]

In 1722 there was published *The Constitutions of the Free-Masons Containing the History, Charges, Regulations, &c., of that most Ancient and Right Worshipful Fraternity*—almost a Bible to English Masons. This work was republished by Benjamin Franklin in America in 1734. The fundamental ideas of Freemasonry, as they affect our study, are described in this book, which reflects the ideas of Desaguliers and of the Reverend James Anderson—believed

to have been the most active of the founders of the first Grand Lodge in England. This work states their views regarding toleration of religion and the part to be played by the order in bringing believers in God together for common moral and humanitarian purposes.

1. Concerning God and Religion. A *Mason* is obliged, by his Tenure, to obey the moral Law; and if he rightly understands the Art, he will never be a stupid *Atheist,* nor an irreligious *Libertine*. But though in ancient Times Masons were charg'd in every Country to be of the Religion of that Country or Nation, whatever it was, yet 'tis now thought more expedient only to oblige them to that Religion in which all men agree, leaving their particular Opinion to themselves; that is, to be *good Men and true* or Men of Honour and Honesty, by whatever Denominations or Persuasions they may be distinguish'd; whereby Masonry becomes the *Center* of *Union,* and the Means of conciliating true Friendship among Persons that must else have remain'd at a perpetual Distance.[530]

The revision of 1738 reads:

1. Concerning God and Religion. A Mason is obliged by his Tenure to observe the moral law as true Noahida [sons of Noah, an early name of Freemasons] and if he rightly understands the craft, he will never be a stupid atheist or an irreligious libertine nor act against conscience. In ancient times the Christian masons were charged to comply with the Christian usages of each country where they travelled or worked; but Masonry being found in all nations, even of diverse religions, they are now generally charged to adhere to that religion, in which all men agree, [leaving each Brother his own particular opinion], that is, to be good men and true, men of honour and honesty, by whatever names, religions or persuasions they may be distinguished; for they all agree in the three great articles of Noah, enough to preserve the cement of the lodge. Thus Masonry is the centre of their union and the happy means of conciliating true friendship among persons who otherwise must have remained at a perpetual distance.

VI. 1. Behaviour in the Lodge before closing: . . . No private piques or quarrels about nations, families, religions or politics must by any means or under any colour or pretence whatsoever be brought within the doors of the lodge; for as Masons we are of the most ancient catholic religion, above mentioned and of all nations upon the square, level and plumb; and like our predecessors in all ages, we are resolved against political disputes, as contrary to the peace and welfare of the Lodge.[531]

Bernard Faÿ, in his work, *Revolution and Freemasonry 1680–1800,* describes the ideas and achievements of the order as a philosophy interested in bringing together for moral development and service those who believe, according to Desaguliers' term, in "the All-wise and All-mighty Architect of the Universe."[532]

Eighteenth century Freemasonry [he writes] took Christianity as an historical fact, but not as a divine revelation; it took the decay of Christianity as another historical

fact, and made ready for its succession. It could be said, in a way, that it adopted towards Christianity the same attitude that Christianity had towards Judaism. The three main principles of eighteenth century Freemasonry—liberty, equality and fraternity—were an inheritance from Christianity; but while Christianity spoke of spiritual freedom, of equality of all souls before God, and of the mystic brotherhood of men, Freemasonry preached political equality, civic liberty, and comradeship of race and benevolence. The field of Christianity was spiritual; the field of Freemasonry social.[533]

. . . Freemasonry had been the main instigator of the intellectual revolution of the eighteenth century and the spiritual father of its political revolutions. But revolutions had not been its aim; no social-minded person likes a revolution, and no benevolent soul accepts light-heartedly the miseries which are brought on by revolutions. Eighteenth century Freemasonry hoped and dreamed of evolution before accepting the fact of revolution and preaching the holiness of revolution.[534]

English Freemasonry, which was transplanted to the United States, was much interested in protecting moral standards, in encouraging charity and good will, in advocating that a Mason should be a loyal subject of the civil power, and in developing a democratic, self-governing body which should be fundamentally religious in the Jewish-Christian tradition but not dogmatic or exclusively connected with any church or religious body. Its most important branch, The Ancient and Accepted Scottish Rite, was first organized in this country in 1801. Its lodges lay emphasis on their chaplains and have Bibles—normally the English King James or authorized version—on the "altar."

There was also a considerable current of French Masonry lodges in America, including the Perfect Union Lodge of Boston (1781) and L'Amenité, Philadelphia (1797). These helped to create the suspicion of Freemasonry as being deistic and opposed to religion, which developed after the turn of the century. Many conservatives took the ground that American Freemasonry was being corrupted by Illuminism disguised as French Masonic Lodges. Two evidences of this may be quoted. A Connecticut periodical, *The Religious Monitor, or Theological Scales,* announced in August, 1798, "a secret conspiracy of the Illuminati in league with corrupted Masons . . .," which proposed to uproot religion. Similarly, the Reverend Jedidiah Morse tried to show the German origin of Illuminism and spoke of its spread to the new republic, where its rapid growth was due largely to the popularity of such "an unprincipled author" as Thomas Paine.[535]

These factors were among the reasons which caused much opposition to Freemasonry, especially in New England.

It must be remembered that a large number of the leaders of the movement which resulted in the American Revolution and in the establishment of the American Constitution were Freemasons. These included men like James Otis,

Benjamin Franklin, George Washington (who took his oath of office as president upon his Masonic Bible), as well as fourteen signers of the Declaration of Independence and many who were active in the Constitutional Convention.[536] There were, however, some conspicuous exceptions, of which John Adams, Patrick Henry, and Thomas Jefferson may be mentioned. It is possible that the secret aspects of Freemasonry made them feel that it was inadvisable to identify themselves with the movement.

Although the matter has been little referred to by American historians outside of Masonic writers, it seems clear that the Masonic lodges, which had been active for a generation prior to the Revolution, influenced not only the movement for the new republic, but also for religious toleration, and this in several ways.

They brought together through correspondence, visitation, conventions, encampments, and various other meetings, the Anglicans of the South, the Congregationalists of New England, the Presbyterians of the middle colonies, the Baptists, and other groups.

They established military lodges in the Revolutionary army which encouraged the same broadening of friendships and contacts.

They asserted their belief in "the great Architect of the universe," and yet took the ground that they would not identify themselves as an organization with any denomination.

They helped to develop a deep interest in the general cause of social welfare, with loyalty both to the moral and spiritual ideals of the Bible and the crusades, emphasis on self-government, and respect for differences of religious convictions, and for honest craftsmanship in any occupation.

They encouraged a friendly attitude toward the Jews, for whose ancient standards of personal and public righteousness, and for whose temple ceremonies, symbols, and mystic rites they had a profound respect. The Scottish Rite includes many representative Jews in its membership.

They showed a sympathetic interest in the Negro, granting a warrant for the first colored lodge, in Boston, in 1784, and the first state Grand Lodge, in Massachusetts, in 1808.[537]

They emphasized the idea which is at the basis of the Declaration of Independence that the universe and all men in it are of divine origin, and that natural law demands the treatment of all men fairly in accordance with their origin and destiny.

They were naturally antagonistic to the Church-State idea, laying supreme emphasis on the individual's freedom of conscience.

They tended to emphasize national rather than purely local or international organization.

The Masonic Service Association of the United States has published a book which contains an impressive statement emphasizing the points that seem to justify our inclusion of Freemasonry among the colonial factors which encouraged religious freedom:

> The Fathers, in the first line of the preamble of the Constitution of the United States, set forth the root idea of the American nation: "We, the people . . . in order to form a more perfect union. . . ." Not only a union of states but a unity of the whole people is the basis upon which all American institutions rest. And all Freemasons should know that the idea of union originated in Colonial Freemasonry, was developed and advocated by Freemasons, and was realized under their leadership. Indeed, Freemasonry was the only institution in Colonial times in which the leaders of all the different Colonies could meet upon common ground.[538]
>
> Only the Masonic lodge was the same institution in every part of the Colonies. In the lodges, the leaders of all the Colonies were taught the same principles and practiced the same polity. In their lodge communications and other fraternal gatherings, Freemasons established a common meeting ground where men of every race, and of the most diverse religious and political views, whether rich or poor, could come together in the spirit of harmony and mutual goodwill. Members of all the lodges were trained in the exercise of self-government under constitutional restraints. Indeed, a review of all the evidence will suggest to the thoughtful mind that the Masonic lodge, derived from the ancient Anglo–Saxon gild, may share the claim to have been the primordial "cell" of the American state with the New England Town meeting derived from the Anglo–Saxon folkmote.[539]

The same ideas are brought forward in another official Masonic work which devotes one of its five chapters to religious liberty. "It is because," it says,

> in our lodges we teach the Brotherhood of Man based on the Fatherhood of God and advance no other dogma. Not only do we leave to every brother the choice of his creed but we draw no swords to compel others to adopt our belief. Nay, we go further than this, for within the tiled precincts of the lodge every Mason is taught to revere and respect and be tolerant of that which is sacred to his brother, be he Christian, Mohammedan or Jew. This is the strength of Masonry's appeal.[540]
>
> We open our lodges with an injunction forbidding all irregular and unMasonic conduct whereby the peace and harmony of the lodge might be disturbed or broken. One of the kinds of conduct which we call unMasonic is the discussion of religious opinions concerning which men differ. The religious opinions concerning which men differ are far removed from the *essentials of religion,* concerning which all Masons, and most thinking men agree. . . . This is what we mean when we talk of promoting the Brotherhood of Man upon earth. This is the sense in which the Freemason understands Religious Liberty. It is liberty to believe according to the dictates of one's conscience, without removing the obligation to think things through.[541]

In the revised text of the Book of Constitutions of 1723, under Article VI, 2,

which refers to the behavior of Masons after the lodge is closed, occurs this statement, which shows the desire of Masons to prevent quarrels about religion; their belief in a fundamental, natural, or truly catholic religion, and at the same time their conviction that the cause of basic religion was advanced by the Reformation.

> In order to preserve peace and harmony no private piques or quarrels must be brought within the door of the Lodge, far less any quarrels about Religion or Nations or State Policy, we being only, as Masons, of the Catholick Religion above mentioned, we are also of all Nations, Tongues, Kindreds and Languages and are resolved against all Politicks [printed in the original in Gothic letters] as what never yet conduced to the welfare of the Lodge nor ever will. This charge has been always strictly enjoin'd and observ'd; but especially ever since the Reformation in Britain or the dissent and *secession* of these Nations from the communion of Rome.[542]

Some of these clauses are pointed to by Roman Catholics as implying that the fundamental or ancient "Catholick Religion" referred to is something more inclusive than the faith of the "Catholic Church," and that it does not provide for the special Christian revelation of God or for the exclusive claims of the Church as the authorized transmitter of revealed truth. Although realizing that American Masonry has a far finer ethical purpose and one that is more Christian, they point to some statements by Masonic leaders in this country that seem to emphasize a similar attitude. For instance, Albert Pike (1809–91), former Grand Commander of the Mother-Supreme Council of Charleston, South Carolina, and Washington, D.C., who was considered by many the leading authority on Scottish Rite ritual, has this to say regarding the religious basis of Masonry:

> Masonry propagates no creed, except its own most simple and sublime one taught by Nature and Reason. There has never been a false Religion in the world. The permanent one universal revelation is written in visible Nature and explained by the Reason and is completed by the wise analogies of faith. There is but one true religion, one dogma, one legitimate belief.[543]

Some think this statement gives inadequate attention to the Jewish–Christian background of Masonry.

It would seem clear that Masonic views as to human dignity, self-government, belief in God, opposition to a State Church, and tolerance for all religious faiths, had their important effect on the American tradition and on the religious-freedom clauses of the Constitution. The fact that about 40 per cent of the presidents of the United States have belonged to the fraternity indicates that in this country Masons retaining these principles have been among our most patriotic citizens. But it is held by some that Freemasonry was, and perhaps is,

anti-Catholic. Undoubtedly it developed this tendency in Europe in its opposition to ecclesiasticism and to all forms of priestcraft; but in America there has never been anything in the constitution or laws of Freemasonry which prevented a Roman Catholic from joining, should he so wish and be allowed by his ecclesiastical superiors. Indeed, in the early days there were cases where Freemasons took part in laying the foundation stones of Catholic churches. This was in keeping with their medieval cathedral-building traditions. An incident in Albany, New York, was particularly significant as the stone of St. Mary's Church was laid in 1806 by an alderman of the town—one John Cassidy—who was not only a member of a masters lodge, and later its senior warden, but also at the time president of the corporation of the local Catholic church, to the building of which some prominent Masons contributed.[544]

It is worth noting that three of the eleven original members of the Southern Supreme Council of the Ancient Accepted Scottish Rite and two of the nine founders of the Northern Supreme Council were Catholics.

There have also been in more recent times a few nominal Catholics who have been members of the craft. The Church, however, has consistently taken the ground that, as Masonry is a secret organization, practicing Catholics should not belong to the society.

The formal actions of the Church against Freemasonry began in 1738, and have continued in many pronouncements since. The principal objections to Freemasonry from the standpoint of the Church are its unsectarian character, with no stress on dogma, save for belief in a God; its practice of secrecy; its emphasis on complete separation of Church and State; its alleged tendency toward syncretism or indifferentism in religion; and its result at times in taking the place of the Church as the main center of fraternal loyalty. These reasons for opposition to Masonry, with the possible exception of the two last named, are based on fact; but it must be remembered that there is a very marked difference between the atheistic, materialistic Masonry of France and most other Latin countries, and the type of Masonry, emphasizing religious, moral, and spiritual ideals, in this country and in England. Since 1738 Roman Catholics have been forbidden to enter or promote Masonic societies under penalty of excommunication. These papal decrees have been duly accepted by many Catholic councils in this country, including the Provincial Councils of Baltimore in 1840 and the Plenary Councils of Baltimore of 1866 and 1884. Under these circumstances loyal Catholics cannot consistently become Freemasons.[545]

It is easy to understand the opposition of the Vatican to Freemasonry, because of the Masonic antichurch attitude in most Catholic countries. These go back largely to the action of the Grand Orient of France in 1877 in omitting paragraphs from its constitution which declared the existence of God and the

immortality of the soul to be of basic importance. It adopted "Liberty, Equality, Fraternity" as its device, and expunged from its rituals and proceedings allusions to the Grand Architect, the Bible, etc. This action led to strong protests, especially from England and the United States, where the belief in God and reverence for the Bible have been considered matters of vital importance in Masonic circles.[546]

As to the general attitude of Freemasonry toward the Roman Catholic Church in this country, let me quote two statements. The first is taken from a pamphlet published by a Sovereign Grand Commander of the Supreme Council of the Ancient Accepted Scottish Rite. It says:

No authoritative spokesman of legitimate and recognized Symbolic Freemasonry has ever engaged in a campaign against or antagonized any *religion*. Freemasonry never has been, is not now, and never will be a party to the reviling of any sincere faith, creed, theology, or method of worship. On the other hand, it feels free to oppose the effort of any religious group to control political office or policy. The evil consequences of the imposition of organized religion upon government is obvious today in many nations where bigotry reigns supreme. It was well illustrated in England when, for centuries, Protestant fanaticism and intolerance struggled on the one hand against Catholic fanatical intolerance on the other. Some of the time the Church was used primarily as an instrument for securing the social and political ends of the State; and the balance of the time the State was regarded primarily as an instrument for securing the religious ends of the Church. . . .[547]

. . . No discussion of the creed of any church is permitted within the tiled Lodge room, and the attitude of Freemasonry toward any and all sects and denominations, toward any form of the honest worship of God, is not one of antagonism but of respect. . . .[548]

. . . Our Fraternity asks no man to carry Freemasonry as an institution into his civic life, to vote as a Mason either in the ballot box or in legislative halls, to perform executive duties as a Mason, or to adjudicate as a Mason. Freemasonry has no fear of the practices, policies or acts of any man whose character is sound. . . .[549]

A more personal view of this much-controverted question as to the attitude of Freemasonry in America toward Roman Catholicism is given in a letter to me by a Mason of high standing who holds an important post in American Masonry.

. . . I do not think symbolic or Blue Lodge Masonry as a whole is anti-Catholic anywhere in this country. I do think that many Masons are anti-Catholic either from personal prejudice or because they are misled by anti-Masonic feeling among Catholics to believe that Masonry should have the same sort of feeling toward the church of Rome. The Southern Jurisdiction of the Ancient and Accepted Scottish Rite of course has been for a long time very definitely anti-Catholic, both in its political activities

against parochial schools, public transportation furnished by the State to private schools, and otherwise. I know of no Grand Lodge in this country which either itself pursues or permits among its Lodges any anti-Catholic activities. Freemasonry, of course, is in no way responsible for radical writers in the anti-Catholic press who choose to attempt to hitch up Masonry with their particular variety of propaganda.

The Grand Lodge of Texas had a royal fight on the subject of the Klan some twenty years ago which definitely ended in an anti-Klan pronouncement, but many southern Masonic leaders have also been leaders of the Klan in times past. I do not, however, think that this had its roots in any feeling in regard to Catholicism but rather in that school of thought which thought force and intimidation was the best way to attack certain parts of the negro problem.[550]

My correspondent states emphatically that all of American Freemasonry is entirely disassociated with the Grand Orient of France and has no sympathy whatever with its naturalistic and atheistic tendencies. He recognizes that it is "obviously impossible for a man to be a good Catholic and a good Freemason at the present time," and that to meet the needs of Catholics for the fraternal type of organization for which Freemasonry stands the Knights of Columbus were organized.

The part played by anti-Masonic sentiment in certain American political campaigns will be described in a later section.[551]

(7) FOREIGN TRADE

A well-known American corporation engaged in manufacturing business machines which are largely in demand abroad uses for advertising purposes the slogan "World Peace Through World Trade." There is some truth in the idea underlying this slogan, and it applies not only to world peace, but to peace among the churches. Foreign trade involves contact with other nationals and with other religions. People cannot deal effectively with other racial groups if they are intolerant. There must be some capacity for give and take, and some breadth of sympathy. Consequently, we have reason to believe that the development of commerce with the American colonies, especially by the British and Dutch in the seventeenth and eighteenth centuries, had some effect on the development of a spirit of toleration at home and abroad. We can see this in certain definite ways. For instance, those responsible for drafting colonial charters increasingly saw the need of attracting settlers of different religious beliefs. This is why the proprietary colonies, which were developed largely for commercial purposes, showed on the whole a larger amount of toleration than other colonies. Merchant proprietors with much land for sale in America, as was the case in such colonies as New Jersey, New York, Georgia, Maryland, and the Carolinas, found it a matter of necessity to provide for a measure of

toleration. We have noticed the effect of this in dealing with the proprietary middle and Southern colonies.[552] We have seen it with special clearness in considering the remarkable services rendered by Cecil Calvert (Lord Baltimore) as proprietary of Maryland.[553]

This point is brought out very clearly by the so-called Act of Surinam of August 17, 1665, in which the British provided for the toleration of Jews. Although it refers specifically to a British colony on the north coast of South America, it was characteristic of American colonial policy at the time and was to have its broad influence. The Act is a long one, but a few pertinent clauses may be reproduced:

Whereas it is good and sound policy to encourage as much as possible whatever may tend to the increase of a new colony, and to invite persons of whatsoever country and religion, to come and reside here and traffic with us; and whereas we have found that the Hebrew nation now already resident here, have, with their persons and property proved themselves useful and beneficial to this colony, and being desirous to encourage them to continue their residence, and trade here; we have with the authority of the governor, his council and assembly, passed the following act:

Every person belonging to the Hebrew nation now resident here, or who may come hereafter to reside and trade here, or in any place or district within the limit of this colony, shall possess and enjoy every liberty and privilege possessed by and granted to the citizens and inhabitants of the colony, and shall be considered as English-born, and they and their heirs shall in this manner possess their property, whether real or personal. . . .

It is also hereby granted and permitted, in the most ample manner possible, to the Hebrew nation, to practice and perform all ceremonies and customs of their religion, according to their usages; also those relating to their marriages and last wills or testaments, and that the acts of marriage, made according to their ties and customs, shall be held valid in every respect. It is also hereby declared that they shall not suffer any let or hindrance in the observance of their Sabbath or festivals, and those who shall trouble them on that account shall be considered disturbers of the public peace, and shall be punished accordingly. . . .[554]

The same tolerant spirit, induced largely by desire to advance colonial trade, is found in the Plantation Act of 1740, which specifically applied to all the British colonies in America.

Whereas the increase of people is a means of advancing the wealth and strength of any nation or country: and whereas many foreigners and strangers from the lenity of our government, the purity of our religion, the benefit of our laws, the advantages of our trade, and the security of our property, might be induced to come and to settle in some of his Majesty's colonies in America, if they were made partakers of the ad-

vantages and privileges which the natural born subjects of this realm do enjoy; be it therefore enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of June, in the year of our Lord one thousand seven hundred and forty, all persons born out of the ligeance of his Majesty, his heirs or successors, who have inhabited and resided, or shall inhabit or reside, for the space of seven years or more, in any of his Majesty's colonies in America, and shall not have been absent out of some of the said colonies for a longer space than two months at any one time during the said seven years, and shall take and subscribe the oaths, and make, repeat, and subscribe the declaration appointed by an act made in the first year of the reign of his late Majesty King George the First . . . ; before the chief judge, or other judge of the colony wherein such persons respectively have so inhabited and resided, or shall so inhabit and reside, shall be deemed, adjudged, and taken to be his Majesty's natural born subjects of his kingdom, to all intents, constructions, and purposes, as if they, and every of them, had been or were born within this kingdom. . . .

III. And whereas the following words are contained in the latter part of the oath of abjuration, Videlicet (upon the true faith of a christian), And whereas the people professing the Jewish religion may thereby be prevented from receiving the benefit of this act; be it further enacted by the authority aforesaid, That whenever any person professing the Jewish religion shall present himself to take the said oath or abjuration in pursuance of this act, the said words (upon the true faith of a christian) shall be omitted out of the said oath in administering the same to such person and the taking and subscribing the said oath by such person professing the Jewish religion, without the words aforesaid, and the other oaths appointed by the said act in like manner as Jews were permitted to take the oath of abjuration, by an act made in the tenth year of the reign of his late Majesty King George the First. . . .[555]

If the government, wishing to encourage trade, was willing to make it easy for Jews to enter the colonies, it is probable that it would also try to make it easy for desirable Christians who were not of the dominant church in the colony concerned to do the same.

Another striking contemporary reference bringing out this point is a request made by the lords of trade to the president of the council in 1750, referring to the case of the Reverend Samuel Davies, who was trying to secure greater toleration for the Presbyterians and other dissenters in Virginia.[556] They write:

With regard to the affair of Mr. Davies the Presbyterian, as Toleration and a free exercise of Religion is so valuable a branch of true liberty, and so essential to the enriching and improving of a Trading Nation, it should ever be held sacred in His Majesty's Colonies; we must therefore earnestly recommend it to your care, that nothing be done which can in the least affect that great point; at the same time you will do well to admonish Mr. Davies to make proper use of that indulgence which our

Laws so wisely grant to those who differ from the Established Church, and to be cautious not to afford any just cause of complaint to the Clergy of the Church of England, or to the people in General.[557]

This is evidence that the agency in England most interested in promoting commerce with the colonies believed that toleration was a matter of importance. This factor was probably even more prominent with the Dutch, as they had large trading interests with the New World in the seventeenth and eighteenth centuries. Antwerp in the time of Charles V, and Amsterdam then and somewhat later, were among the trade centers of Europe, and they were also among the places where religious differences were most respected. Indeed, the port and business metropolis of Amsterdam and the university town of Leyden, only twenty-five miles away, were in the forefront of the movement for greater religious freedom. The Dutch, who came to the American colonies to trade and to settle, helped to carry with them religious toleration, and their record in New Amsterdam (New York), except under Stuyvesant, was on the whole a good one for the time.[558]

A recent study has shown that in the sixteenth and seventeenth centuries Anglican, Puritan, and Roman Catholic clergymen in England did much to promote the trading and colonial ventures which laid the foundations of the later British Empire. Among those who preached trade expansion were not only Protestants identified with discovery, but also such Catholic divines as Nicholas Farrar and John Donne. By persuading ministers of different denominations to support their trading ventures, these and other men, although their purposes may not have been altogether beyond reproach, did much to attract settlers of different churches, and these laid the foundations for later toleration.[559]

There is another way in which the commercial and industrial progress of the colonies advanced toleration. Ruffini points out that trade tended to distract colonies "from their absorbing pre-occupations and their exclusiveness in the matter of religion," and believes that this encouraged their thinking relatively less of the Church and more of the State and of commerce, and that it resulted in the colonists seeing "the enormous advantage the latter would derive from liberty."[560] This is probably true, and it is illustrated by the fact that the two greatest commercial powers of the seventeenth century, England and Holland, were the ones which showed the largest measure of religious tolerance in their colonial laws. These were still very inadequate, but in comparison with their greatest rival, Spain, they were progressive.

In this connection it must be remembered that a factor promoting colonial tolerance among Protestants was one which at the same time tended to pro-

mote intolerance against Catholics. This was the battle for political and economic supremacy between Protestant England and Catholic Spain which played a large part in early North American colonization. The sermonic literature of late Elizabethan and of Jacobean times showed Puritan and Anglican united on the necessity of checkmating Spain in the New World. This was behind much of the writing on the subject of colonial voyages and immigration by such influential men as Richard Hakluyt (1552?–1616) with his *Discourse of Western Planting,* and Samuel Purchas (1575?–1626) with his *Pilgrimes.* Here was one point at least on which the Protestant colonists, who were in the overwhelming majority outside of Maryland, could unite; but as Anglicans were considered with some justice to hold a position that shared some of the Catholic tradition, they were apt to be suspect by their Protestant neighbors.

Chapter IV

THE INFLUENCES ENCOURAGING RELIGIOUS FREEDOM IN THE REVOLUTIONARY AND EARLY NATIONAL PERIODS

Now that we have considered the steps taken to try to secure religious freedom in the colonies, we must give attention to the special influences which were acting to accelerate the process during the Revolutionary period in the old thirteen colonies which were developing into the states of the American Republic.

Section 1. THE EFFECT OF POLITICAL INDEPENDENCE AND DEMOCRACY

Many of those responsible for breaking away from England and establishing the Republic had in mind from the first both political and religious freedom. Two late colonial actions, in 1774 and 1775, reflect this clearly.[1]

The journals of the Continental Congress show that the Massachusetts Legislature, on motion of Samuel Adams, issued an appeal on June 17, 1774, for the convening of the first Continental Congress. Among the purposes was that the representatives of the colonies should devise measures "for the recovery and establishment of their just rights and liberties, civil and religious." This action was followed by that of the New York Provincial Congress the following year, which resolved that "neither the Parliament of Great Britain, nor any other earthly legislature or tribunal, ought or can of right interfere or interpose in anywise howsoever in the religious and ecclesiastical concerns of the colonies."[2] These two actions coming in close succession show that the leaders of the Revolution had religious liberty as well as civil liberty in mind, at least the leaving to each colony its own independence in such matters. They were prophetic of the events which followed.

The achievement of political independence and the establishment of a democratic form of government in this country were major factors in promoting religious freedom and in securing the legal separation of Church and State The Protestant churches no longer looked to Europe for authority, and in due

time all American churches except the Roman Catholic became entirely autonomous. It was inevitable that they should adopt forms of government that were largely democratic in character. Even the Roman Catholic Church, sometimes unwillingly, was obliged by circumstances to place some responsibility on the laity, although not in matters strictly ecclesiastical. The doctrine embedded in the Declaration of Independence and in other American charters of liberty laid emphasis not only on the worth of the individual but on the individual's right to determine his own views and to act in accordance with the dictates of conscience. This was to result in manhood suffrage being gradually extended in the early decades of the nineteenth century, especially as a result of the equalitarian views of the Jacksonian democrats.[3] Indeed, the individual gained a freedom which had never before been known on a large scale in history. The corporate thinking to which the Middle Ages, under the leadership of the Church, had given expression in forms of great significance, was to give way largely before the new conceptions of liberty, and these had their effect inevitably in the religious as well as in the political field. The Lords Spiritual and the Lords Temporal no longer controlled the situation, but the Third Estate became in many ways the dominant factor.

It is true that the ideas of religious freedom developed by Roger Williams and other American thinkers stimulated ideas of political freedom,[4] but it is equally true that when political freedom was achieved it tended to encourage religious freedom still more. Democracy in matters political could not justify any exclusive Church–State connection in this country. All religious groups which observed the law must be treated alike. They could be impartially encouraged by the State, but the State must have nothing to do with their administration. The forces tending to the legal separation of ecclesiastical and political functions in all activities of government were beginning to be overwhelming.

Independence released all the churches from many bonds and gave them new opportunities. Their policies were no longer controlled by the State, either through subsidies, or hampering restrictions, or—except in rare cases—by unequal laws. Now they had to make their own decisions and support their own work. They were all to be treated alike, without fear or favor, as long as they observed the laws and showed sympathy with our form of government. This release of energies for their own creative work is clearly shown in the preface of the *Book of Common Prayer* adopted by Episcopalians in convention in Philadelphia October 7, 1789. It refers to the changes brought about by the Revolution and the resulting opportunity to revise their liturgy and form of government "uninfluenced and unrestrained by any worldly authority whatsoever." Free men could now have free institutions of their own choice, and, if they wished, of their own making, in the field of religion.

Section 2. THE EFFECT OF THE QUEBEC ACT (1774)

This Act of Parliament supplementing and correcting the Treaty of Paris of 1763, which ended the Seven Years' War and ceded Canada, with about 60,000 French Canadians, to Great Britain, is the most significant official declaration involving religious toleration covering a large area of the continent prior to American independence. As it included in its scope not only the Canadian province of Quebec but most of that section of the present United States between the Ohio and Mississippi Rivers—namely, practically all the territory covered by the States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, soon to be ceded by Great Britain under the Treaty of 1783—it is of importance in our study. This whole region was to be governed from Quebec under French civil law—but English criminal law—and without a representative assembly. Furthermore, Roman Catholics were granted the free exercise of their religion and much the same rights, including the collection of tithes, which they had enjoyed under the French when Canada (including most of our present Northwest) was almost entirely a Catholic country. Indeed, "the religion of the Church of Rome" was given such favorable treatment as to cause many intolerant outbursts and much resentment among Puritans and Anglicans in the thirteen colonies, who feared its effect on their own Protestant traditions. It was denounced by their press, which exaggerated its terms and implications. The attitude of the *Pennsylvania Packet* was quite characteristic. It said, "We may live to see our churches converted into mass houses and our lands plundered by tythes for the support of the Popish clergy . . . and the city of Philadelphia may yet experience the carnage of St. Bartholemew's Day."[5] An American rhymester wrote:

> If Gallic Papists have a right
> To worship their own way
> Then farewell to the Liberties,
> Of poor America.[6]

The Act was interpreted in Protestant America as an "establishment" of the Roman Catholic religion in Canada, and Alexander Hamilton, in opposing it, made much of this attitude.[7] In British government circles and among Catholics in the United States it was generally defended rather as an act of toleration and freedom. The wording shows that it was probably intended to be partly both, but in reality it was not completely either. The Roman Catholics could continue to get their old tithes, and this fact is emphasized, but the government was also authorized, though this is secondary, to apply government funds "towards the encouragement of the Protestant religion."[8]

The attitude of that leader among American Revolutionary patriots, Samuel Adams (1722–1803), may be taken as characteristic. In an address to the Mohawk Indians, he said:

"Brothers,—They have made a law to establish the religion of the Pope in Canada, which lies so near you. We much fear some of your children may be induced, instead of worshipping the only true God, to pay his dues to images made with their own hands."[9]

He had earlier stated his belief that "much more is to be dreaded from the growth of Popery in America, than from Stamp-Acts or *any other* Acts destructive of mens *civil* rights."[10] Many an orator asked his hearers whether they would "submit to Popery and Slavery."

John Adams (1735–1826) was equally alarmed, stating in 1771 that "the barriers against popery, erected by our ancestors, are suffered to be destroyed, to the hazard even of the Protestant religion."[11]

These are merely typical expressions of the fear of representative Americans of the Revolutionary period that the attitude of consideration shown the religious scruples of Roman Catholics by the British Parliament in passing the Quebec Act of 1774, which seems to many people today reasonable, might make it extremely difficult to maintain the freedom of the Protestant colonies.[12] The Act, which has been called by an eminent Catholic scholar, Cardinal Gasquet (1848–1929), the "great charter of religious liberty in Canada,"[13] encouraged the independence movement. This has only recently been adequately appreciated by American historians. Among these is the late Professor Claude Van Tyne (1869–1930), head of the Department of History at the University of Michigan, who after a careful survey of conditions in the period, wrote:

In view of all the facts that have here been presented, I believe that we must hereafter give more weight to the religious factor among the causes of the American Revolution. After twelve years' study of the period, I am not convinced that the economic causes of which so much has been made are adequate alone to explain the bitterness of the controversy. In fact, the whole colonial period must be studied, and many conditions noted, which there is no time to mention here, before one may at all comprehend why the American people rebelled in 1775. Among the many causes, I rate religious bigotry, sectarian antipathy, and the influence of the Calvinistic clergy, which we have reviewed, as among the most important. . . .[14]

Monsignor Peter Guilday (1884–1947) is another who has seen clearly the part played by the Quebec Act in stirring up colonial antipathy to Great Britain.

There were many protests. The most important early one is found in the Suffolk County resolutions of September 6, 1774, which contain some of the

anti-Catholic sentiments to appear a month later in the "Address to the People of Great Britain," and the "Petition to the King."[15] It read:

That the late act of parliament for establishing the Roman Catholic Religion and the French laws in that extensive country, now called Canada, is dangerous in an extreme degree to the Protestant religion and to the civil rights and liberties of all Americans; and, therefore, as men and Protestant Christians, we are indispensably obliged to take all proper measures for our security.[16]

The following year (1775) the New York Provincial Congress also took action; action which may be considered something of a straddle, since it clearly states the importance of complete religious freedom and at the same time expresses fear as to the effect of the Quebec Act in encouraging "popery." This is a combination not infrequently found at the period, when many non-Roman Catholics honestly feared that any encouragement given the papacy would make the winning or the preservation of religious freedom for all other groups extremely difficult. This is the action of the Congress:

And as the free enjoyment of the rights of conscience is of all others the most valuable branch of human liberty, and the indulgence and establishment of Popery all along the interiour confines of the old Protestant Colonies tends not only to obstruct their growth, but to weaken their security, that neither the Parliament of *Great Britain*, nor any other earthly legislature or tribunal, ought or can of right interfere or interpose in anywise howsoever in the religious and ecclesiastical concerns of the Colonies.[17]

The most significant protests, however, were those drawn up by the Continental Congress, which began its sessions in Philadelphia on September 5, 1774. Under date of October 14 it adopted resolutions asserting the rights of the colonies and enumerating the acts of Parliament which were considered "infringements and violations of the foregoing rights." Among these was the act passed

for establishing the Roman Catholick Religion in the province of Quebec, abolishing the equitable system of English laws, and erecting a tyranny there, to the great danger, from so total a dissimilarity of Religion, law, and government of the neighbouring British colonies, by the assistance of whose blood and treasure the said country was conquered from France.[18]

Later, when it hoped to secure the adherence of Canada to the American cause, it "perceived the fate of the Catholic and Protestant to be strongly linked together,"[19] but the earlier resolutions indicated its real views.

The address "To the people of Great Britain" adopted by the Congress on October 24 referred to many grievances. Among them were:

That we think the Legislature of Great-Britain is not authorized by the consti-

tution to establish a religion, fraught with sanguinary and impious tenets, or, to erect an arbitrary form of government, in any quarter of the globe. These rights, we, as well as you, deem sacred. And yet sacred as they are, they have, with many others been repeatedly and flagrantly violated. . . .

. . . And by another Act the dominion of Canada is to be so extended, modelled, and governed, as that by being disunited from us, detached from our interests, by civil as well as religious prejudices, that by their numbers daily swelling with Catholic emigrants from Europe, and by their devotion to Administration, so friendly to their religion, they might become formidable to us, and on occasion, be fit instruments in the hands of power, to reduce the ancient free Protestant Colonies to the same state of slavery with themselves.

This was evidently the object of the Act:—And in this view, being extremely dangerous to our liberty and quiet, we cannot forebear complaining of it, as hostile to British America.—Superadded to these considerations, we cannot help deploring the unhappy condition to which it has reduced the many English settlers, who, encouraged by the Royal Proclamation, promising the enjoyment of all their rights, have purchased estates in that country.—They are now the subjects of an arbitrary government, deprived of trial by jury, and when imprisoned cannot claim the benefit of the habeas corpus Act, that great bulwark and palladium of English liberty:—Nor can we suppress our astonishment, that a British Parliament should ever consent to establish in that country a religion that has deluged your island in blood, and dispersed bigotry, persecution, murder and rebellion through every part of the world. . . .[20]

This matter was again referred to in a petition of Congress "To the King's most excellent majesty" adopted on October 26. Various alleged illegal acts of the British government are mentioned, including

. . . a fourth for extending the limits of Quebec, abolishing the English and restoring the French laws, whereby great numbers of British freemen are subjected to the latter, and establishing an absolute government and the Roman Catholick religion throughout those vast regions, that border on the westerly and northerly boundaries of the free protestant English settlements. . . .[21]

As a result, the Act was a factor of some importance in bringing on the disaffection which led to the American Revolution, partly because of its religious provisions, and partly because it seemed to prevent the western expansion of Virginia and other colonies. It was considered one of the five "Intolerable Acts" of Parliament, and was referred to in veiled terms in the Declaration of Independence as one of the many acts of the king having as an object "the establishment of an absolute Tyranny over these States." The Declaration condemned the king "for abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its

Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies. . . ."[22]

Although the Act was bitterly opposed by the inhabitants of the thirteen colonies at the time of its promulgation, as they feared that Quebec's "Popish slaves" would be used to overthrow the ideas of civil and religious liberty which were growing apace in most of the thirteen colonies, it was later without doubt a factor in determining the liberal policy regarding religion which marked the great Ordinance of 1787 for the government of the Northwest.

The Quebec Act is considered today to have been on the whole a wise and farsighted one on the part of a dominantly Protestant nation in dealing with the large Roman Catholic population of an important province.

Section 3. THE EFFECT OF FRENCH THOUGHT, EVENTS AND MILITARY AID—"REPUBLICAN RELIGION" AND DEISM

France had a considerable influence on American ideals at the time of our Revolution and Constitutional Convention and immediately thereafter. There had been diplomatic contact with France since 1776, Silas Deane having been sent over to purchase military supplies just before the Declaration of Independence. The Continental Congress later appointed a diplomatic commission consisting of Deane, Arthur Lee, who had been its agent in London, and most important, Benjamin Franklin, who sailed for France late in 1776. Franklin did much to create a spirit of sympathetic understanding between the French people and those forming the new republic. The French alliance, which Franklin negotiated in 1778, meant extensive military aid to the united colonies in their difficult struggle with her then hereditary enemy, and gave France an opportunity to pay back her old score against England for her loss of Canada. The fact that a great nation with the Catholic tradition was helping her on a large scale with men, munitions of war, and loans in a critical time, and that it had influenced another Catholic state, Spain, to give some aid and to declare war on England, could not but weaken American anti-Catholic feeling which the Quebec Act[23] had increased. Loyalists played up the danger of an alliance which would increase the influence of "popery," and would lead to the introduction of the Inquisition[24] on American soil, but to no effect. The Marquis of Lafayette (1757–1834) and his fellow officers and soldiers created a favorable impression. Protestants admired many of their Catholic allies, and as a result the cause of religious freedom was at least temporarily advanced in the new nation that was taking form.

The direct political influence of France on the form of our government was

probably not as great as was previously thought. This is shown clearly by a study of the chronology. It was only on June 17, 1789, that the Third Estate declared itself a National Assembly; on July 14 of that year that the Bastille was destroyed; and in the following month that the Declaration of the Rights of Man and of Citizens was adopted; whereas the Constitutional Convention in this country met and drafted our Constitution in the summer of 1787; its formal ratification was announced by Congress, September 13, 1788; and the Bill of Rights received Senate approval September 25, 1789. As we show in another section,[25] it was the bills of rights of the various American states that mainly influenced the French Declaration.

And yet the French influences were considerable. France supplied cumulative evidence in the last half of the eighteenth century of the dangers of absolute monarchy and of the union of Church and State, and of the need of placing the electorate on a broader basis, and of fitting government to pay a more socially progressive part in a new age. Furthermore, there were at least three French writers of great influence on early American political thought: Montesquieu, Rousseau, and Condorcet. Their contributions in our general field are discussed elsewhere.[26]

We have considered the influence of the Franco–American alliance of 1778 in tempering the anti-Catholic feeling in the united colonies, and the influence of French political and social thought on the character of our government. This continued for some time, but the extreme views and actions of Citizen Genêt, who came over as the first minister of the French Republic in 1793, and was on his arrival greeted with ovations by the Antifederalists, resulted in a distinct cooling off of enthusiasm for things French.

It remains to speak of the effect of French philosophic skepticism in weakening the orthodox Churches and in trying to form a creedless "national religion" in this country. This movement goes back to Benjamin Franklin, who had reacted against orthodoxy not only in theology but in many other fields, and who consequently formed a bridge between the liberalism brewing in French philosophical and religious thought and the thinking of the new republic. When the seniors in Yale College debated in 1785 "Whether Infidels and Libertines in Morals ought to be admitted into Civil Magistracy," they doubtless had in mind both France and the questions of religious liberty being discussed in the new states.[27]

Every student of history knows that in France the movements for reform in the 1770's and 1780's turned into the Revolution of 1789. With its various radical effects on French life we are not here concerned. Suffice it to refer to some of its more radical religious views that soon had their repercussions in this country, resulting not only in much skepticism and religious indifference, and some

extreme Deistic cults, but also in fear of church influence on politics which so troubled Jefferson.[28] It took the "Great Revival" of 1797–1805 to counteract and largely overcome the effect of its more radical tendencies.[29]

The Illuminati of New England, who were believed to have some connection with Masonry,[30] formed a group much influenced by French philosophy. Among them were some ministers of religion interested in liberal thought and in breaking the bond between Congregationalism and the State. In spite of rumors which arose about 1798 and which caused grave concern that the members of this order were identified with the Bavarian radical group which was unfriendly both to government and religion, and that they were connected with the European radical wing of Freemasonry, these identifications have not been proved. The Columbian Illuminati of New York, sometimes known as the Clintonian Faction, were closely related. So was the Society of Ancient Druids, formed by a group of apostate Masons. But perhaps their most characteristic manifestation was the holding of a meeting in New York in 1804 to promote the building of a "Temple of Nature." Its advocates state: "While so many altars are raised to advance the cause of superstition, it will be a pity indeed if one cannot be reared in honor of the true and living God, and to promote the exalted cause of a pure and incorruptible morality!"[31]

All these movements of freethinkers were closely related to French Deism, which had some popular support in the early days of the republic because of its repudiation of all forms of Calvinistic election and its belief in the equality of all men. It tended to strengthen the rationalistic as distinct from the evangelistic wing of Protestantism.

Jefferson and Franklin had done much to make the liberal French point of view regarding religion and government known in this country, but perhaps the three men most identified in the public mind with its more radical aspects were: Thomas Paine (1737–1809),[32] author of *The Age of Reason*, Ethan Allen (1737/8–89), who wrote the *Compendious System of Natural Religion*, and Elihu Palmer (1764–1806). Palmer was violently anticlerical and an ardent Republican. He tried without success to make Deism the popular religion. He was a leader in founding the Deistical Society of the State of New York, which advocated a return to the laws of nature. Among its fundamental principles were:

> That the universe proclaims the existence of one supreme Deity, worthy the adoration of intelligent beings.
>
> That a religion mingled with persecution and malice cannot be of divine origin.
>
> That education and science are essential to the happiness of man.
>
> That civil and religious liberty is equally essential to his true interests.
>
> That there can be no human authority to which man ought to be amenable for his religious opinions.[33]

This is a statement of one of the representative members of the group, one who was really interested in trying to develop a new philosophical religion which might obviate what he thought to be the theological and ecclesiastical extremes of the churches, and yet provide the necessary basis of faith in God for the new nation. Needless to say, the movement, though it probably had some influence in broadening inherited thought, could not supply a substitute for Christianity. It has been described in an interesting way in a book entitled *Republican Religion: The American Revolution and the Cult of Reason.*[34] It had points of contact with Rousseau's "Civil Religion," which he and others tried to impose during the French Revolution, and showed in its relation to the historic Churches something of that "intolerance of unbelief" which has been frequently noted in European history.

And yet Deism as a skeptical attitude of mind rather than as a creed was prominent at several institutions of learning through the first decade of the nineteenth century—that is, until there came a realization of the extreme consequences of the lack of vital religion resulting from the French Revolution, and until the Great Revival (1797–1805), which in spite of its emotional extremes was a constructive movement in the interest of religion and democracy, had exerted its profound influence.

The evidence is clear from such widely separated colleges as Yale, William and Mary, the University of North Carolina, and the University of Georgia.[35] Even as late as 1831 when Alexis de Tocqueville (1805–59) visited America he saw the limitations of "Republican Religion" and other deistic and radical cults advocated by a few intellectuals. Although as a liberal Catholic he wished the Church to accommodate itself to democracy by giving up some of its theological and ecclesiastical rigidity, he realized that a vital faith based on religious convictions was essential for the citizens of a democracy if it was to be assured the needed moral support.

Section 4. THE EFFECT OF THE EXPERIENCE OF SOLDIERS AND CHAPLAINS IN THE REVOLUTIONARY ARMY

Life in the army always has some advantages and some disadvantages. Among the advantages, from the standpoint of these volumes, was that those who served broadened their outlook both with reference to their own denomination and their political allegiance. They came in contact with men of different religious bodies from different parts of the country and gained respect for them. They increasingly felt that they were fighting not for their colony only, but for the united colonies which were to form a new nation. Massachusetts Congregationalists, Rhode Island Baptists, New York Episcopalians and Dutch Re-

formed, New Jersey Presbyterians, Pennsylvania members of many small Protestant sects with a continental background, Maryland Roman Catholics, and a scattering of Jews from the seaboard cities, to give a few examples, met in the same camps and gained a new idea of the need and possibility of religious tolerance. Such an intermingling of men of different religious faiths and backgrounds had not before taken place in America except in a few of the larger cities, and in three or four small universities that had broken away, at least in actual practice, from rather narrow local and denominational backgrounds. Furthermore, soldiers visiting sections of the emerging independent nation could not fail to be impressed by what they saw of the contributions to social life of such differing groups as Quakers, Lutherans, Congregationalists, and Anglicans.

The contribution of the chaplains to these results was important. Detached from their own local church, they developed a sense of responsibility for all the men in their regiment, and rendered a large service. Whatever may be the other effects of serving as a chaplain, there can be no doubt that it tends to broaden a man's outlook and to break down narrow denominationalism. Furthermore, in some states, such as Virginia, action was early taken opening the regimental chaplaincies, which had been established in 1758 at the request of Colonel George Washington, not only to members of the Establishment but to other religious bodies, a movement taken largely at the instigation of the Baptists. The annals of the Virginia Convention contain this entry under date of Wednesday, August 16, 1775:

An address from the Baptists of this colony was presented the Convention, and read; setting forth that, however distinguished from the body of their countrymen by appelatives and sentiments of a religious nature, they nevertheless consider themselves as members of the same community in respect to matters of a civil nature, and embarked in the same common cause; that, alarmed at the oppression which hangs over America, they had considered what part it would be proper to take in the unhappy contest, and had determined that in some cases it was lawful to to go war, and that they ought to make a military resistance against *Great Britain* in her unjust invasions, tyrannical oppression, and repeated hostilities; that their brethren were left at discretion to enlist, without incurring the censure of their religious communities, and, under these circumstances, many of them had enlisted as soldiers, and many more were ready to do so, who had earnestly desired their ministers should preach to them during the campaign: they, therefore, had appointed four of their brethren to make application to the convention for the liberty of preaching to the troops at convenient times, without molestation and abuse, and praying the same may be granted them.

Resolved, That it be an instruction to the commanding officers of the regiments or troops to be raised, that they permit Dissenting clergymen to celebrate divine worship, and to preach to the soldiers, or exhort, from time to time, as the various operations

of the military service may permit, for the sake of such scrupulous consciences as may not choose to attend divine service as celebrated by the chaplains.[36]

In this, as in so many other matters involving religious freedom, Virginia took the lead.

In Massachusetts and Connecticut in the earliest days of the Revolution the army chaplains were Congregationalists who had identified themselves with the patriot cause. President Stiles of Yale in his *Diary* for November 17, 1774, gives interesting details. He tells us that Colonel (afterward General) Israel Putnam's letter of alarm about the serious situation in Massachusetts was read "publickly in most of the Congregations in Connecticut" "on Lordsday" promptly after the receipt of the handbill containing his letter about the disturbances. Many of the town's armed men began marching that day or the following under the lead of their pastor:

> East Guilford—83 armed, with Mr. Todd their pastor.
> Haddam—100 armed—animated by Rev. Mr. May.
> Chatham—100 marched with Rev. Mr. Boardman, Pastor.[37]

So the chaplaincy grew naturally out of local ties between pastor and congregation.

But steps on a larger, more official scale were needed. These may be clearly illustrated by quoting certain documents from the records of the Provincial Congress of Massachusetts for the year 1775.

On May 25, 1775,

> The report of the committee appointed to consider the practability of providing chaplains, was again read and accepted, and is as follows, viz.:
>
> Whereas, it is necessary that chaplains should be appointed in the Massachusetts army, under the command of the Hon. Artemas Ward, Esq., which, if appointed, on the establishment made by this Congress will greatly enhance the colony debt; and, whereas, it has been represented to this Congress, that several ministers of the religious assemblies within this colony, have expressed their willingness to attend the army aforesaid, in the capacity of chaplains, as they may be directed by this Congress; therefore, *Resolved*, that it be, and it is hereby recommended, to the ministers of the several religious assemblies within this colony, that, with the leave of their several congregations, they attend said army in their several turns [towns], to the number of thirteen at one time, during the time the army shall be encamped, and that they make known their resolutions, to the Congress, thereon, or to the committee of safety as soon as may be.[38]

On June 1, 1775, the Provincial Congress received a letter and minute from a convention of clergymen in session at Watertown:

To the Hon. Joseph Warren, Esq., President of the Provincial Congress of the Colony of the Massachusetts Bay, &c.:

Sir:—We, the pastors of the congregational churches of the colony of the Massachusetts Bay, in our present annual convention, gratefully beg leave to express the sense we have of the regard shewn by the honorable Provincial Congress to us, and the encouragement they have been pleased to afford to our assembling as a body this day. Deeply impressed with sympathy for the distresses of our much injured and oppressed country, we are not a little relieved, in beholding the representatives of this people, chosen by their free and unbiassed suffrages, now met to concert measures for their relief and defense, in whose wisdom and integrity, under the smiles of Divine Providence, we cannot but express our entire confidence.

As it has been found necessary to raise an army for the common safety, and our brave countrymen have so willingly offered themselves to this hazardous service, we are not insensible of the vast burden that their necessary maintenance must [devolve] upon the people. We, therefore, cannot forbear, upon this occasion, to offer our services to the public, and to signify our readiness, with the censent of our several congregations, to officiate, by rotation, as chaplains to the army.

We devoutly commend the Congress, and our brethren in arms, to the guidance and protection of that Providence, which, from the first settlement of this country, has so remarkably appeared for the preservation of its civil and religious rights.

Samuel Langdon, *Moderator.*

At the Convention of the Ministers of the Massachusetts Bay, June 1, 1775:

"The convention, taking into consideration the method of furnishing the army with chaplains, agreeably to the offer they have made to the honorable Congress, think it most expedient, that a sufficient number of persons should be chosen out of their number, by the officers of the army, to officiate statedly, rather than by quick rotation, in that character; and the convention depend, that the parochial duties of those ministers who shall serve in the army, will be performed by their brethren in the vicinity.

"A true copy. Test: Amos Adams, *Scribe.*" [39]

On June 2, the committee of the Provincial Congress appointed to consider this proposal reported, recommending a resolution which was duly adopted:

Whereas, it is of the greatest importance that our colony army be furnished with gentlemen to act as chaplains, on whose virtue, firmness and patriotism they can safely rely; and whereas, the reverend convention of the clergy of this colony have, most nobly and without reward, tendered their services in their country's cause:

Therefore, *Resolved,* That the general and field officers be, and they hereby are empowered and directed, to choose nine gentlemen of the clergy of this colony, to act as chaplains to said army: provided that not more than two of them belong to any one county; and the general officers of said army are hereby empowered to determine the regiments to which each chaplain shall be desired to officiate; and also, the committee

of supplies are hereby directed to make suitable provision for said chaplains during their continuance in camp.[40]

These documents show the fine spirit of co-operation that generally existed between the revolting colonies and the clergy. They are also of value for our study as showing the early beginnings in this country of the army chaplaincies, one of the most characteristic and successful of our developments in the field of informal Church–State relations.[41]

As far as a continental or Federal, as distinct from the colonial, system of chaplains is concerned, the legal origin of the corps of chaplains is found in the resolutions of the Continental Congress on July 29, 1775, providing that their pay be twenty dollars a month, the same as then provided for captains.[42] The following year chaplains were specifically authorized by General Washington, who was emphatic in his belief that religion and public worship were essential to morale both in civil and military life.

On July 9, 1776, he issued the following order:

The honorable Continental Congress having been pleased to allow a chaplain to each regiment, the colonels or commanding officers of each regiment are directed to procure chaplains accordingly, persons of good characters and exemplary lives, and to see that all inferior officers and soldiers pay them a suitable respect. The blessing and protection of Heaven are at all times necessary, but especially so in times of public distress and danger. The General hopes and trusts, that every officer and man will endeavour to live and act as becomes a Christian soldier, defending the dearest rights and liberties of his country.[43]

Washington in 1777 showed his deep interest in having chaplains chosen who would as far as possible hold religious views sympathetic to those of the men he served. With this in mind, and to avoid religious disputes, he protested the proposal to substitute brigade for regimental chaplaincies. He held that the latter plan was preferable, as it

gives every Regiment an Opportunity of having a chaplain of their own religious Sentiments, it is founded on a plan of a more generous toleration . . . a Brigade . . . composed of four or five, perhaps in some instances six Regiments, there might be so many different modes of worship.[44]

The *Original Rules and Articles of War* published in 1777 referred to "Every chaplain who is commissioned to a regiment, company, troop, or garrison."[45]

On May 2, 1778, another order was issued from "Head Quarters, Valley Forge":

The Commander-in-Chief directs that Divine service be performed every Sunday at 11 o'clock, in each Brigade which has a Chaplain. Those Brigades which have none

will attend the places of worship nearest to them.—It is expected that Officers of all Ranks will, by their attendance, set an example to their men. While we are duly performing the duty of good soldiers, we certainly ought not to be inattentive to the higher duties of religion. To the distinguished character of a Patriot, it should be our highest glory to add the more distinguished character of a Christian.

The signal instances of Providential goodness which we have experienced, and which have almost crowned our arms with complete success, demand from us, in a peculiar manner, the warmest returns of gratitude and piety to the Supreme Author of all Good.[46]

As we shall see in a later section, these orders reflected the interest which General Washington always showed in advancing the interests of religion, and played an important part in the development of the military chaplaincy.[47]

For our purposes here, the most important thing to note is that army experience in the Revolution, with its contacts wider than those of denominational parishes, tended to broaden the point of view of chaplains and enlisted men, and consequently to encourage the cause of religious toleration. It also laid firm foundations for army chaplaincies, which have increased in significance with the years.

Section 5. THE PRACTICAL NEEDS OF THE SITUATION

The actual situation in the states at the beginning of the national period made further guarantees of religious freedom essential. It is estimated that from 1776 to 1820 nearly 250,000 immigrants came to the United States.[48] This, although small in comparison with the movement that set in after the War of 1812, was nonetheless highly significant from our standpoint, especially as it included a considerable number of Roman Catholics, some Jews, and representatives of many religious groups from nearly all parts of Europe. It was realized that the United States, partly because it was a new country with vast resources, partly because of its democratic form of government, and partly because of hard conditions of life in certain European areas, would attract constantly increasing numbers of immigrants, and that they were needed for the development of the country. Consequently, the nation, in view of the increasingly variegated character of its population, must be on a religious-freedom basis.

Turning from without to within, the situation was equally significant. It was manifestly impossible under the conditions existing to have a Federal Congregational Church even should some extremists in New England want it, or a Federal Episcopal Church even if some Southern Episcopalians had thought it desirable. The only basis on which Congregationalists, Presbyterians,

Baptists, and Episcopalians, the four largest colonial groups in the order named, as well as Mennonites, Quakers, Dutch Reformed, Roman Catholics, Jews, Methodists, Lutherans, and others could unite in forming a Federal government, was on the basis of religious freedom.

It will be seen, then, that, leaving out of account for the moment the influence of the theories of European and American philosophers and various historical factors, the actual, practical necessities of the situation at the end of the eighteenth century in the United States could not be met by a State Church or even by mere toleration on the part of the dominant Protestants of other religious groups. Complete religious freedom, as long as it did not involve acts contrary to the safety of the State or public morals, was clearly indicated as the only possible solution. The mere fact that new religious denominations could be established at will without government approval would of itself prevent much criticism by those dissatisfied with existing conditions, and would tend to create a spirit of good will.

Section 6. THE CONDITION AND PUBLIC INFLUENCE OF THE CHURCHES DURING AND IMMEDIATELY AFTER THE REVOLUTION

At the close of the colonial period there were something under three million persons in the thirteen colonies, of whom about one-sixth were slaves. Recent studies at the University of Chicago show somewhat over three thousand religious organizations or congregations, counting each church or chapel separately. These were divided about equally among New England, the Middle Atlantic States, and the South. The total (3,005) actually enumerated—about one thousand more than were estimated a decade ago[49]—were thus distributed:

Congregationalists, mostly in New England	658
Presbyterians, largely in the middle colonies but becoming increasingly prominent in the South	543
Baptists, especially in Rhode Island, the middle colonies, the Carolinas, and Virginia	498
Anglicans, mainly in the South and in the larger towns elsewhere	480
Quakers, mostly in Pennsylvania and North Carolina	298
German and Dutch Reformed, mainly in the middle colonies	251
Lutherans, largely in the middle colonies	151
Roman Catholics, mainly in the large Eastern towns and in Maryland	50
Miscellaneous minor groups	76
	3,005[50]

The Methodists are not included, as they did not at the time form a separate religious body, but worshipped with the Episcopalians or had their services in private homes. When they organized separately, in 1784, they had only fifteen thousand members.

At the beginning of the American Revolution nine out of the thirteen colonies had an established Church. During its course some progress was made in the direction of separation and religious freedom by the newly organized states. At its close, when the Constitutional Convention was meeting in Philadelphia in 1787, all the New England states, except Rhode Island, retained what was virtually established Congregationalism; Maryland and South Carolina continued their Church of England connection, which had just been given up by Virginia, North Carolina, and Georgia; Rhode Island, Pennsylvania, and Delaware had never had any Established Church; while New York and New Jersey retained only vestiges of their former connection with the Episcopal and Dutch Reformed Churches.[51]

In general the Church was respected and its ministers held a position of great influence. Richard Hildreth, writing about conditions in 1792, said that the "natural aristocracy of the United States" included "the body of lawyers," "the clergy and leading members of the great religious sects," "the merchants and capitalists," "the large landed proprietors of the Middle States," and "the slaveholding planters of the South."[52]

This is a fair statement, but it is misleading if from the use of the word "aristocracy" it is inferred that the clergy were not in general sympathetic with the liberal movement of the time which led to the establishment of the United States. We shall see later in this chapter that although a considerable group of Anglicans, owing to the official connection of the Church of England with the British government, and some others, favored the mother country, the great majority of ministers supported the patriot cause.

When we consider the matter of religious tests, which was the only religious matter definitely dealt with at the Federal Constitutional Convention, we find such tests as a qualification for office held over from colonial times by many of the original thirteen states. Maryland and Massachusetts required a belief "in the Christian religion." Georgia, New Hampshire, New Jersey, and North Carolina had also Protestant tests. The most theological was in Delaware, where the requirement adopted in 1776 included "faith in God the Father, and in Jesus Christ, His only Son, and in the Holy Ghost, one God, blessed forever more."[53] Some of the states had further requirements as to belief in the inspiration of the Bible, and one, Pennsylvania, demanded the belief that God was "the rewarder of the good and the punisher of the wicked."

We must remember that the various Protestant bodies in America in the

Revolutionary period had not come to any form of effective united effort. They acted individually, not as a group through the Federal Council, as would be to a considerable extent the procedure today in dealing with public questions.

As to the general atmosphere of religion and religious freedom which prevailed in this country in these formative years, there is evidence to the effect that in spite of much indifference as to regular attendance at public worship, both were held in high regard, indeed considered indispensable for the rising republic. Two representative contemporary writers who left their impressions may be quoted to illustrate this point.

The first is the early American political economist, Tench Coxe (1755–1824). In an article entitled "Thoughts on the present situation of the United States," written in Philadelphia in October, 1788, he says:

> . . . A short residence gives the emigrant from any country, of every language and every religion, the rights and privileges of a citizen. Whatever may be his faith or mode of worship, the laws place him beyond the reach of all interference with what his feelings, his judgment and his conscience dictate to him as right. No man can exercise over him any civil authority but by his own free and uncontrouled vote.[54]

The same publicist is believed to have been the author of an article entitled "Notes concerning the United States of America, containing facts and observations relating to that country, for the information of emigrants," written in Philadelphia two years later (May 1, 1790):

> The situation of religious rights in the American states [he wrote], though also well known, is too important, too precious a circumstance to be omitted. Almost every sect and form of Christianity is known here—as also the Hebrew church. None are tolerated. All are admitted, aided by mutual charity and concord, and supported and cherished by the laws. In this land of promise for the good men of all denominations, are actually to be found, the independent or congregational church from England, the protestant episcopal church (separated by our revolution from the church of England) the quaker church, the English, Scotch, Irish and Dutch presbyterian or calvinist churches, the Roman catholic church, the German Lutheran church, the German reformed church, the baptist and anabaptist churches, the hugonot or French protestant church, the Moravian church, the Swedish episcopal church, the seceders from the Scotch church, the menonist church, with other christian sects, and the Hebrew church. Mere toleration is a doctrine exploded by our general condition; instead of which have been substituted an unqualified admission, and assertion, "that their own modes of worship and of faith equally belong to all the worshippers of God, of whatever church, sect, or denomination."[55]

The second authority to be quoted is Alexander Hamilton (1757–1804), Secretary of the Treasury. In his well-known report on manufactures, submitted

in obedience to an order of the House of Representatives of January 15, 1790, he says:

IV As to the promoting of emigration from foreign countries.

Men reluctantly quit one course of occupation and livelihood for another, unless invited to it by very apparent and proximate advantages. Many, who would go from one country to another, if they had a prospect of continuing, with more benefit, the callings to which they have been educated, will often not be tempted to change their situation by the hope of doing better in some other way. Manufacturers, who (listening to the powerful invitations of a better price for their fabrics, or their labour, of greater cheapness of provisions and raw materials, of an exemption from the chief part of the taxes, burdens and restraints, which they endure in the old world, of greater personal independence and consequence, under the operation of a more equal government, and of, what is far more precious than mere religious toleration, a perfect equality of religious privileges) would probably flock from Europe to the united states to pursue their own trades or professions, if they were once made sensible of the advantages they would enjoy, and were inspired with an assurance of encouragement and employment. . . .[56]

Similar impressions were left on other Americans of the time and on foreign visitors.[57]

These quotations show clearly the trend of developments in the church situation at the time the government was formed. They can be understood, however, only as we have a clear picture of the attitude of the Churches during the preceding Revolutionary period.

(1) THE PROTESTANT CHURCHES

What was expected by way of support from the colonial clergy is brought out by the action of the Massachusetts Provincial Congress on the eve of the Revolution, December 6, 1774. The Continental Congress appointed a committee to draft "an address to the clergy." This, having been put in form satisfactory to this legislative body, was duly accepted, and it was "ordered that copies thereof be sent to all ministers of the gospel in the province. . . ." The letter, which follows, is interesting both as showing the standing and potential influence of the New England clergy at the time, and the desire of the Provincial Congress to have them support the Continental Congress in the steps it was taking in behalf of "civil and religious liberty."

Reverend Sirs:—When we contemplate the friendship and assistance our ancestors, the first settlers of this province, (while overwhelmed with distress) received from the pious pastors of the churches of Christ, who, to enjoy the rights of conscience, fled with them into this land, then a savage wilderness, we find ourselves filled with the most grateful sensations. And we cannot but acknowledge the goodness of heaven in

constantly supplying us with preachers of the gospel, whose concern has been the temporal and spiritual happiness of this people.

In a day like this, when all the friends of civil and religious liberty are exerting themselves to deliver this country from its present calamities, we cannot but place great hopes in an order of men who have ever distinguished themselves in their country's cause; and do therefore recommend to the ministers of the gospel in the several towns and other places in this colony, that they assist us in avoiding that dreadful slavery with which we are now threatened, by advising the people of their several congregations, as they wish their prosperity, to abide by, and strictly adhere to, the resolutions of the Continental Congress, as the most peaceable and probable method of preventing confusion and bloodshed, and of restoring that harmony between Great Britain and these colonies, on which we wish might be established, not only the rights and liberties of America, but the opulence and lasting happiness of the whole British empire.

Resolved, That the foregoing address be presented to all the ministers of the gospel in the province.[58]

Similarly in 1779 the members of the Continental Congress issued a *Circular Letter* "to Their Constituents." This was largely taken up with the financial situation of the country and the need of a successful termination of the war. The Massachusetts Assembly reprinted the document and ordered all ministers of the commonwealth to read it to their congregations.[59]

Most of them were doubtless delighted to do this, as they were ardent supporters of the colonial cause, which appealed to the Congregational ministers of New England as the cause of freedom. This fact is brought out by Edmund Burke (1729–97) in his *Speech on Conciliation with America* in Parliament March 22, 1775. He mentioned "religion in the Northern Provinces" as one of the six major reasons for the "fierce spirit of liberty" existing. Going into details he said:

> ... Religion, always a principle of energy, in this new people is no way worn out or impaired; and their mode of professing it is also one main cause of this free spirit. The people are Protestants, and of that kind which is the most adverse to all implicit submission of mind and opinion. This is a persuasion not only favourable to liberty, but built upon it. I do not think, Sir, that the reason of this averseness in the dissenting churches from all that looks like absolute government, is so much to be sought in their religious tenets as in their history. Every one knows that the Roman Catholic religion is at least coeval with most of the governments where it prevails, that it has generally gone hand in hand with them, and received great favour and every kind of support from authority. The Church of England, too, was formed from her cradle under the nursing care of regular government. But the dissenting interests have sprung up in direct opposition to all the ordinary powers of the world, and could justify that opposition only on a strong claim to natural liberty. Their very existence depended on the

powerful and unremitted assertion of that claim. All Protestantism, even the most cold and passive, is a sort of dissent. But the religion most prevalent in our Northern Colonies is a refinement on the principle of resistance; it is the dissidence of dissent, and the protestantism of the Protestant religion. This religion, under a variety of denominations agreeing in nothing but in the communion of the spirit of liberty, is predominant in most of the Northern Provinces, where the Church of England, notwithstanding its legal rights, is in reality no more than a sort of private sect, not composing, most probably, the tenth of the people. The Colonists left England when this spirit was high, and in the emigrants was the highest of all; and even that stream of foreigners which has been constantly flowing into these Colonies has, for the greatest part, been composed of dissenters from the establishments of their several countries, and have brought with them a temper and character far from alien to that of the people with whom they mixed.[60]

He also shows how Southern Episcopalians favored freedom from England, but on economic and political grounds rather than on religious ones. In general Burke's statement is a significant appraisal of the influence of religion in the colonies and of its support of political freedom.

We deal in other sections with the early history of all the major religious bodies in this country[61] and with the Church–State ideas which they inherited and developed.[62] Suffice it here to summarize the part played by them in the Revolutionary struggle. In a word, with the exception of the Anglicans who had taken the oath of allegiance to the king, they were for the most part American patriots. Governor William Livingston (1723–90), writing in 1790, shortly before his death, gives the contemporary opinion of a fair and competent observer. It is contained in an article entitled "Observations on the Support of the Clergy."

> They have moreover been exceedingly useful to us in the late revolution; for which we ought gratefully to remember them. Had they been as generally against us, as they were for us, we should probably have found our resistance against Britain much more arduous and protracted than it has been. But they cordially flocked to the standard of liberty; and by their example and influence, attracted thousands to the same banner. They were almost universally good whigs, excepting some of the northern Levites, who were *fed with the crumbs that fell from the* society's *table;* and who, as cheerfully, "sold their birth-right for a mess of pottage." . . .[63]

Three groups of ministers were specially active in supporting the cause of the Revolution: the Congregationalists of New England, the Presbyterians of the middle colonies, and the Baptists generally. The Episcopal clergy generally opposed it, although the laity, especially in Virginia and South Carolina, included some of the most influential patriots.

As to the Congregationalists, the evidence is conclusive. In their fast-day sermons for over a decade they had held up the evils of political tyranny and

prepared the people for a larger control of their own affairs. A large number served on town committees and as members of various provincial congresses and conventions.[64] Furthermore, in their sermons and addresses on the eve of the Revolution they urged definite action, and similarly during the contest they encouraged the American troops and in many cases joined the army as chaplains. It is surprising to find how many of them had read Locke and had adopted his views as to the "unalienable rights" of the people.[65] Nor was the patriotic attitude on the part of the established ministers confined to the Boston neighborhood, with which it is specially associated because of the events at Lexington, Cambridge, and Boston. Connecticut ministers were equally patriotic. Even in what was then the extreme western county of New England, Berkshire County, Massachusetts, there were outstanding ministerial patriots.

This patriotic attitude increased rather than diminished during the war. At its close, when Massachusetts was considering the adoption of the Federal Constitution, General Lincoln wrote to Washington: "It is very fortunate for us, that the clergy are pretty generally with us. They have in this State a very great influence over the people."[66] He referred, of course, to the dominant established Congregationalists, who throughout New England were active in the patriot cause.

Some evidence of this is shown by an item published in the *Connecticut Gazette* of January 9, 1778. The Norwich correspondent, under date of January 1, states:

> Last Sabbath there was a Contribution in the several Parishes in this Town, for the Benefit of the non-commissioned Officers and Soldiers in the Continental Army that belong here, . . . when there was collected 386 Pair of Stockings, 227 Pair of Shoes, 118 Shirts, 78 Jackets, 48 Pair Overhalls, 208 Pair Mittens, 11 Buff-caps, 15 Pair Breeches, 9 Coats, 22 Rifle Frocks, 19 Handkerchiefs and £258 17 8 in Money; all which is forwarded on to the Army: Also a Quantity of Pork, Cheese, Wheat, Rye, Indian Corn, Sugar, Rice, Flax, Wood, &c. &c. engaged to be delivered the Committee appointed to receive and distribute the same to the needy Families of the Officers and Soldiers. The whole Value of this DONATION, at a low Estimate, will exceed £1400.[67]

But New England was not the only part of the country where the clergy were ardent patriots. John Adams wrote to his wife from Philadelphia at the time of the second session of the Continental Congress: "The clergy of all denominations have preached upon politics and war in a manner that I have never heard in New England. They are a flame of fire."[68]

The Presbyterians were particularly active. The rector of Trinity Church, New York, in his report for 1776 to the Society for the Propagation of the Gospel, paid them unconsciously this tribute:

I have it from good authority that the Presbyterian ministers, at a Synod where most of them in the middle colonies were collected, passed a resolve to support the Continental Congress in all their measures. This and this only, can account for the uniformity of their conduct; for I do not know one of them, nor have I been able, after strict inquiry, to hear of any, who did not, by preaching and every effort in their power, promote all the measures of the Congress, however extravagant.[69]

The Beards quote the remark of a Tory who was bitter against the Presbyterians for their support of the Revolution. Referring to the clergy he said:

The few that pretend to preach are mere retailers of politics, sowers of sedition and rebellion, serve to blow the cole of discord and excite the people to arms. The Presbyterian clergy are particularly active in supporting the measures of Congress from the rostrum, gaining proselytes, persecuting the unbelievers, preaching up the righteousness of their cause, and persuading the unthinking populace of the infallibility of success![70]

Such contemporary testimonies, which might be largely extended, are clear evidence as to where the sturdy Scotch-Irish Presbyterians in the colonies stood on the subject of independence. Their great leader was John Witherspoon,[71] the signer, who was also a member of the Continental Congress. The Reverend George Duffield (1732–90) of Philadelphia was another. He became a chaplain in the army. The pastoral letter of the Presbyterian Synod of New York and Philadelphia of 1783, prepared by a committee of which Witherspoon was a member, and sent soon after the conclusion of peace, tells the story of Presbyterian devotion to the American cause.

We cannot help congratulating you on the general and almost universal attachment of the Presbyterian body to the cause of liberty and the rights of mankind. This has been visible in their conduct, and has been confessed by the complaints and resentment of the common enemy. . . . Our burnt and wasted churches, and our plundered dwellings, in such places as fell under the power of our adversaries, are but an earnest of what we must have suffered, had they finally prevailed. The Synod, therefore, request you to render thanks to Almighty God, for all his mercies, spiritual and temporal, and in particular manner for establishing the Independence of the United States of America.[72]

The Lutherans have a strong tradition of Church and State separation and have been inclined to leave political matters severely alone; but they departed somewhat from this rule at the time of the American Revolution. Although founded by Europeans, the Church began to feel the restraint of domination from Germany, Sweden, and other oversea countries. For instance, in 1774 the council of the Swedish Lutheran Gloria Dei Church in Philadelphia

frankly told the archbishop and consistorium in Sweden that they wanted "a preacher of their own choice, and a native American." A beginning was made in 1786; and in 1789 the plan of choosing ministers "from this side of the water" was granted by the Swedish king, who formally permitted the American Swedish congregations in the future to "choose their own preachers from those born in their country. . . ."[73] This proved difficult, and in some cases their parishes were served by Episcopalians. The Lutheran churches seem on the whole to have preserved during the war period their traditional attitude of aloofness from civil strife, but the Mühlenberg family, which gave them their most prominent American leaders, was an exception. Of the sons of the first Mühlenberg (Henry Melchior, 1711–87), a Lutheran pastor, one, John Peter Gabriel Mühlenberg (1746–1807), himself a minister of a German Lutheran church, became brigadier general in the Continental Army. It was he who in his farewell sermon to his congregation in January, 1776, said: "In the language of Holy Writ, there is a time for all things. There is a time to preach and a time to fight; and now is the time to fight."[74] We are told that after the benediction he took off his pulpit robe and donned a colonel's uniform, then, going to the church door, enlisted his frontier parishioners!

His brother, Frederick Augustus Mühlenberg (1750–1801), was a minister of Christ Lutheran Church, New York. He became a member of the Continental Congress and was president of the Pennsylvania convention which ratified the Federal Constitution. He was later the first speaker of the United States House of Representatives.

The attitude of the pacifist groups during the Revolution, such as the Quakers, Mennonites, and Moravians (who later modified their attitude), is well expressed by certain resolutions passed by the Schwenkfelders, a small German Protestant sect, some of whose representatives in 1734 reached Pennsylvania, where the denomination still exists. These issued the following declaration to emphasize their attitude toward military service and to strengthen their members in refusing such service:

A Candid Declaration of Some So-called Schwenkfelders Concerning Present Militia Affairs, May 1, 1777.

We who are known by the name Schwenkfelders hereby confess and declare that for conscience' sake it is impossible for us to take up arms and kill our fellowmen; we also believe that so far as knowledge of us goes this fact is well known concerning us.

We have hitherto been allowed by our lawmakers to enjoy this liberty of conscience.

We have felt assured of the same freedom of conscience for the future by virtue of the public resolution of Congress and our Assembly. We will with our fellow citizens gladly and willingly bear our due share of the common civil taxes and burdens excepting the bearing of arms and weapons.

We can not in consequence of this take part in the existing military arrangements, though we would not withdraw ourselves from any other demands of the government.

Whereas, at present through contempt of the manifested divine goodness and through other sins, heavy burdens, extensive disturbances by war and divers military regulations are brought forth and continued.

Whereas, we on the first of this month made a candid declaration concerning present military arrangements to the effect that we can not on account of conscience take part in said military affairs and

Whereas, it seems indeed probable that military service will be exacted from many of our people and that on refusal to render such service heavy fines will be imposed.

Therefore, the undersigned who adhere to the apostolic doctrines of the sainted Casper Schwenkfeld and who seek to maintain the same by public services and by instruction of the young have mutually agreed, and herewith united themselves to this end that they will mutually with each other bear such fines as may be imposed on account of refusing for conscience' sake to render military service in case deadly weapons are carried and used. Those on whom such burdens may fall will render a strict account to the managers of the Charity Fund in order that steps may be taken to a proper adjustment.[75]

In Pennsylvania, which because of the liberal attitude of its founder was the home of most pacifist sects, the Assembly, on June 30, 1775, recalling that "many of the good People of this Province are conscientiously scrupulous of bearing arms . . . recommended to the associators for the defence of their country and others, that they bear a tenderly and brotherly Regard toward this class of their Fellow subjects and Countrymen." But the Assembly suggested that "they cheerfully assist in proportion to their abilities such associators as cannot spend their time and substance in the Public Service without great injury to themselves."[76]

The situation of the Quakers was particularly difficult. Some were expelled from the monthly meetings for paying war taxes. The overwhelming sentiment was, however, favorable to American independence. The war tax was a question which created much debate among them, as among Mennonites, Moravians, and other groups that were deeply interested in the peace cause. It was a matter of contemporary comment that many Quakers and closely related pacifist groups "renounced their religious principles" as far as supporting a war to free themselves from what they considered tyranny was concerned.[77]

The Baptists earnestly favored independence. This was due largely to their desire for religious liberty. Their leaders saw clearly that religious and civil liberty went hand in hand. Among the foremost champions of the democratic movement were the Baptist ministers, Isaac Backus (1724–1806), whose services

to religious freedom are cited elsewhere,[78] and the Baptists of Virginia[79] may be taken as representative.

The Episcopalians were in an awkward position. Their clergy belonged to a Church that was established in most of the Southern colonies and in the portion of New York that included New York City. It was also the State Church in England, where many of them had been educated, most of them had been born, and all of them had been ordained. They had also on ordination taken the oath of conformity, which involved allegiance to the crown. Such an elementary matter as prayers for the king, rather than for the new American government, occasioned serious difficulty, especially as some colonies decreed that such prayers for king and Parliament must be omitted, although it would seem that they needed divine guidance more than ever! An amusing incident well shows the temper of the time. A divine who used at a Sunday service the usual petition for blessing on "our excellent King George" saved himself from ill treatment by adding: "O Lord, I mean George Washington!"[80]

For these, as well as for social and historical reasons, the Anglican clergy were generally loyal to the English crown, and though urging reforms in administration they did not early favor independence. According to the best available figures a large majority of these clergy in the American colonies at the outbreak of the Revolution were so strong in their loyalist convictions that they left the country, returning home or moving to Nova Scotia or to other colonies not involved in the American contest. They suffered particularly in New England, partly because of old Puritan prejudice, even more because they were Tories in a Whig stronghold. One who has made a firsthand study of the facts in this part of the country states that only "an exceedingly small number capitulated to the new order."[81]

This also seems to have been largely true in New York and adjoining regions. Good contemporary evidence may be found in a letter written in October, 1776, by the Reverend Charles Inglis (1734–1816), rector of Trinity Church, New York City. He opposed the Declaration of Independence and declined the request to omit prayers for the king. His ability and his loyalty to the crown resulted in his being chosen, after the Revolution, Bishop of Nova Scotia, the first colonial bishop of the Church of England. Writing to the Society for the Propagation of the Gospel, he referred with pride to the loyalty of the clergy in the contest. "The present rebellion," he said, "is certainly one of the most causeless, unprovoked, and unnatural that ever disgraced any country. Although civil liberty was the ostensible object, yet it is now past all doubt that an abolition of the Church of England was one of the principal springs of the dissenting leaders' conduct." He further asserted that "All the society's missionaries in New

Jersey, New York, Connecticut, have proven themselves faithful, loyal subjects," shutting up their churches rather than cease praying for the king, and he urged the establishment of the episcopate as an encouragement to such fidelity.[82]

As far as the interest of the Episcopal clergy in the cause of the Revolution is concerned, their most favorable attitude was in Virginia and Maryland, where about one-third are known to have supported the cause of independence, which was also true of those in and around Philadelphia; but even in Virginia the Episcopal Church was so weakened, partly by the loyalist clergy and partly by disestablishment, that it was doubted whether it could ever be revived. But it was, thanks to disestablishment itself and to the fine early bishops of Virginia, James Madison, bishop from 1790 to 1812, and Richard Channing Moore, from 1814 to 1841. The influence of William White (1784–1836) as chaplain of Congress for fifteen years and as the Bishop of Pennsylvania from 1787 to 1836, was also nation-wide, as he was a broad-minded churchman, a patriot, and a saint.

However, the fact that Washington and a large number of his Southern lay colleagues in the cause of independence and in the formation of the new government were Episcopalians gave the Church a greater prominence in this period than the attitude of a majority of the clergy would indicate. Probably no parish church in the colonies has more associations with the national cause than Christ Episcopal Church in Philadelphia. This had special connections with the founders of the country. The dignified building, in which the Continental Congress attended divine service in a body July 20, 1775, was erected in 1727 and still stands. It took the place of a church built thirty years earlier. Seven signers of the Declaration of Independence—namely, Franklin, Morris, Wilson, Hopkinson, Rush, Ross, and Hewes—and five signers of the Constitution are buried in its graveyard, and many of them worshipped more or less regularly in the old church.

During part of his two terms as president, when the capital was in Philadelphia, President and Mrs. Washington regularly occupied pew 58. The same pew was later occupied by John Adams. Benjamin Franklin also had a pew here, and was a member of the committee that built the spire and imported the bells. The Reverend William White, a man of exalted character and sincere patriotism, whose national services have already been mentioned, was rector of the parish, and a friend of many of the founders of the nation. He also served as chaplain of the Continental Congress from 1787 to 1791. The prayer book in which Mr. White indicated in his own handwriting the prayers for the king which were to be omitted by vote of the vestry meeting on the same day that independence was proclaimed, is still preserved.

The Methodists, being still under the aegis of the Episcopal Church, and influenced by the strong views of John Wesley (1703–91), were naturally for the most part loyal to the mother country, though none threw themselves more earnestly and devotedly than they into the building up of the new government when the war was over.

The amount of literature emanating from religious leaders and dealing with the issues of independence was enormous. It is estimated that in the quarter century ending in 1775 half of the books and pamphlets published in the American colonies dealt with the religious aspect of the political situation which resulted in the Revolution.[83]

(2) THE CATHOLIC CHURCH

The Roman Catholics were sympathetic with the Revolutionary cause. There were practically no Tories among them. This fact is the more remarkable in view of the anti-Catholic feeling which had always been latent and which had, as we have seen above, been lashed into a good deal of a fury by the Quebec Act.[84]

Monsignor Guilday, who has given much thought to the question, frankly says that he does not fully realize how under the circumstances the Roman Catholics became almost to a man supporters of the Revolution. Probably the explanation is not a single or a simple one. The influence of the Carrolls of Maryland; the anti-English feeling of the then relatively small but active Irish Catholic population; the growing support in the colonies, led by Virginia, for constitutional religious freedom which would give them a better chance than Protestant establishments; the broad tolerance of Washington; the fact that Catholic France was aiding America in a military way and that her bishops and clergy had even contributed six million dollars to the Revolutionary cause;[85] the fine influence in support of the colonists of some of the priests in the West, especially Father Pierre Gibault (1737–1804); the feeling that any change in the status of the colonies must almost inevitably be for the better, appear to me to be among the factors which led American Roman Catholics to throw themselves so heartily into the struggle for independence, in which there was even a Catholic regiment. It should be remembered that a Roman Catholic, Charles Carroll of Carrollton, was one of the signers of the Declaration of Independence, and that there were two Catholic signers of the Federal Constitution, namely, Daniel Carroll and Thomas Fitzsimmons.

The clergy as such took little active part in promoting the patriotic cause except as Father John Carroll,[86] afterward archbishop, was a member of the diplomatic mission to Canada in 1776 to try to secure the friendly aid, or at least the neutrality, of that province,[87] and that he may have influenced his

brother Daniel, who supported the cause of religious freedom at the Constitutional Convention.

Monsignor Guilday, frequently quoted in these volumes as the leading historian of American Roman Catholicism, quotes from an early nineteenth-century manuscript, which he believes to have been written by Archbishop Carroll (1735–1815), a patriot intimate with several of the fathers of the republic. This gives the reasons which were believed to have influenced the first Congress to have taken the broad and tolerant view toward Catholics reflected in the "Letter to the Inhabitants of Quebec."[88] Here are the four reasons given:

I. The leading characters of the first assembly or congress, were, through principle, opposed to every thing like vexation on the score of religion; and as they were perfectly acquainted with the maxim of the Catholics, they saw the injustice of persecuting them for adhering to their doctrines.

II. The Catholics evinced a desire not less ardent than that of the Protestants, to render the provinces independent of the mother country: and it was manifest that if they joined the common cause and exposed themselves to the common danger, they should be entitled to a participation in the common blessings which crowned their efforts.

III. France was negotiating an alliance with the United Provinces; and nothing could have retarded the progress of that alliance more effectually, than the demonstration of any ill will against the religion which France professed.

IV. The aid, or at least the neutrality of Canada, was judged necessary for the success of the enterprise of the provinces, and by placing the Catholics on a level with all other Christians, the Canadians, it was believed, could not but be favourably disposed towards the revolution.[89]

We shall deal later[90] with the struggles of the Roman Catholic Church to develop its work in the new republic against many difficulties and prejudices. It has perhaps been sufficient to show here the generally friendly reciprocal attitude of its members and the new government during the Revolutionary period.

(3) THE JEWISH GROUPS

At the beginning of the Revolution Jews in the United States were counted by the hundreds, rather than by many thousands. Their total did not reach ten thousand until well after its close, but about one hundred men served in the American Army or Navy. On the whole they had been well treated in their principal settlements, Newport, R. I., New York City, Philadelphia, and Charleston, S. C., therefore most of their leaders decided to support the colonies, as they realized increasingly that the cause of American democracy and of religious freedom went hand in hand.

The most important contribution made by the Jews to the American cause in the Revolution was providing the patriotic financier Haym Salomon (*c.* 1740–85). He came to this country from Poland, where he had been actively identified with the struggle for independence. He was so active in the American cause in New York that he was imprisoned by the British, but escaped to Philadelphia, where he became one of the leading American bankers of his time. His patriotism is shown by the fact that on August 25, 1778, he signed a petition for employment to the Continental Congress. He was of material assistance to Robert Morris in financing the Revolution. He provided Morris with something over $200,000, and was the principal depositor in his Bank of North America. He also invested in a large amount of government obligations. In Morris's diary from 1781 to 1784 are some seventy-five entries regarding Salomon. He was also the recognized broker in this country of France, the King of Spain, and other European countries or rulers. And yet he had been so generous that he died in poverty.

There is authentic evidence that he befriended financially, and without any expectation of recompense, two of the leading statesmen of the time, namely, James Wilson (1749–98), who was not only a signer of the Declaration of Independence but an important figure in the Federal Constitutional Convention of 1787, where he favored a strong central government; and James Madison, who wrote on August 27, 1783: "I have for some time past been a pensioner on the favor of Haym Salomon, a Jewish broker." His services to the Revolution were unquestioned, and are shown by a Senate committee in 1850, which referred to the fact that he "gave great assistance to the Government by loans of money and by advancing liberally of his means to sustain the men engaged in the struggle for independence at a time when the sinews of war were essential to success."[91]

From the standpoint of these volumes his most interesting contribution was made on December 23, 1783, when he united with three other members of the Philadelphia Synagogue in a petition to the Council of Censors of Pennsylvania. They stated that, although the Bill of Rights provided for no religious test, Jews were actually excluded from participation in the state's public affairs by the oath requiring that certain officials believe the Scriptures of the Old and New Testaments. Salomon was an officer of the Jewish Synagogue, treasurer of the Society for the Relief of Destitute Strangers in Philadelphia, which was open to persons no matter what their creed or race, and prominent in other ways. Here is the petition:

To the honourable the COUNCIL of CENSORS, assembled agreeable to the Constitution of the State of Pennsylvania. The Memorial of Rabbi Ger. Seixas of the Synagogue of the Jews at Philadelphia, Simon Nathan their Parnass or President, Asher

Myers, Bernard Gratz and Haym Salomon the Mahamad, or Associates of their council in behalf of themselves and their brethren Jews, residing in Pennsylvania,

Most respectfully showeth,

That by the tenth section of the Frame of Government of this Commonwealth, it is ordered that each member of the general assembly of representatives of the freemen of Pennsylvania, before he takes his seat, shall make and subscribe a declaration, which ends in these words, "I do acknowledge the Scriptures of the old and new Testament to be given by divine inspiration," to which is added an assurance, that "no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this state."

Your memorialists beg leave to observe, that this clause seems to limit the civil rights of your citizens to one very special article of the creed; whereas by the second paragraph of the declaration of the rights of the inhabitants, it is asserted without any other limitation than the professing the existence of God, in plain words, "that no man who acknowledges the being of a God can be justly deprived or abridged of any civil rights as a citizen on account of his religious sentiments." But certainly this religious test deprives the Jews of the most eminent rights of freemen, solemnly ascertained to all men who are not professed Atheists.

May it please your Honors,

Although the Jews in Pennsylvania are but few in number, yet liberty of the people in one country, and the declaration of the government thereof, that these liberties are the rights of the people, may prove a powerful attractive to men, who live under restraints in another country. Holland and England have made valuable acquisitions of men, who for their religious sentiments, were distressed in their own countries.—And if Jews in Europe or elsewhere, should incline to transport themselves to America, and would, for reason of some certain advantage of the soil, climate, or the trade of Pennsylvania, rather become inhabitants thereof, than of any other State; yet the disability of Jews to take seat among the representatives of the people, as worded by the said religious test, might determine their free choice to go to New York, or to any other of the United States of America, where there is no such like restraint laid upon the nation and religion of the Jews, as in Pennsylvania.—Your memorialists cannot say that the Jews are particularly fond of being representatives of the people in assembly or civil officers and magistrates in the State; but with great submission they apprehend that a clause in the constitution, which disables them to be elected by their fellow citizens to represent them in assembly, is a stigma upon their nation and religion, and it is inconsonant with the second paragraph of the said bill of rights; otherwise Jews are as fond of liberty as their religious societies can be, and it must create in them a displeasure, when they perceive that for their professed dissent to doctrine, which is inconsistent with their religious sentiments, they should be excluded from the most important and honourable part of the rights of a free citizen.

Your memorialists beg further leave to represent, that in the religious books of the Jews, which are or may be in every man's hands, there are no such doctrines or principles established as are inconsistent with the safety and happiness of the people of

Pennsylvania, and that the conduct and behaviour of the Jews in this and the neighbouring States, has always tallied with the great design of the Revolution; that the Jews of Charlestown, New York, New-Port and other posts, occupied by the British troops, have distinguishedly suffered for their attachment to the Revolution principles; and their brethren at St. Eustatius, for the same cause, experienced the most severe resentments of the British commanders. The Jews of Pennsylvania in proportion to the number of their members, can count with any religious society whatsoever, the Whigs among either of them; they have served some of them in the Continental army; some went out in the militia to fight the common enemy; all of them have cheerfully contributed to the support of the militia, and of the government of this State; they have no inconsiderable property in lands and tenements, but particularly in the way of trade, some more, some less, for which they pay taxes; they have, upon every plan formed for public utility, been forward to contribute as much as their circumstances would admit of; and as a nation or a religious society, they stand unimpeached of any matter whatsoever, against the safety and happiness of the people.

And your memorialists humbly pray, that if your honours, from any consideration than the subject of this address, should think proper to call a convention for revising the constitution, you would be pleased to recommend this to the notice of that convention.[92]

Salomon's biographer tells us that, though it was natural that the rabbi, himself a strong supporter of the patriotic cause, should be the first signer of the petition, Salomon was "no doubt the chief promoter"[93] of the project, and that it was "effectual," since the Constitution was so modified in 1790 as to make conscientious Jews as eligible as Christians for public office. Doubtless other factors also contributed to this result, but this petition from honored Jewish citizens of Philadelphia, one of whom had made a contribution of national importance to the cause of the Revolution, undoubtedly helped greatly to secure this important step forward in religious liberty.

The change effected is shown by a comparison of the frame of government of 1776 and the constitution of fourteen years later. The former, although guaranteeing religious freedom, required that each member of the State House of Representatives should take this oath or affirmation:

I do believe in one God, the creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration.[94]

The constitution of 1790 (drafted in 1789) read:

That no person, who acknowledges the being of a God and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth.[95]

The spirit of the Declaration of Independence and of the Federal Constitution was having its influence in giving the Jews complete religious freedom.

It is gratifying to know that "a shrine of tolerance and cooperation" was dedicated in Chicago in December, 1941, by the Haym Salomon Foundation. The sculptor, the late Lorado Taft, depicted the Jewish leader with Washington and Robert Morris. The governor of the state, the mayor of the city, and Roman Catholic and Episcopal bishops were among those who participated in the ceremony.[96]

Jonas Phillips (1736–1803),[97] who filed the petition of 1783, arrived in the United States in 1756 and was in business in turn in Charleston, South Carolina, Albany, and New York, becoming a freeman of New York in 1769. He was from the first an ardent patriot, and left New York rather than continue in the city under the British. He was active in the synogagues there and in Philadelphia, to which he removed. His high standing in the Jewish community is shown by the fact that he presided at the consecration of the Philadelphia Synagogue in 1782, which included Haym Salomon and other well-known Jews in its membership. Phillips served for a time in the Revolutionary army, being one of about one hundred Jewish participants.[98]

The liberal spirit of the time is shown by the fact that the rector of Christ Church, Philadelphia, and the rabbi of the Mikveh Israel Synagogue marched side by side in the parade following the ratification of the Constitution of the United States.

Section 7. THE NEW FAITH IN HUMANITY AND HUMAN PROGRESS

The idea of progress, which had become so dominant toward the close of the eighteenth century, should be added to the factors which contributed to the development of complete religious freedom in the United States. This idea was due largely to the Enlightenment, which not only assumed the worth and potentiality of man, but his right to do his own thinking, and held out a glorious future for humanity if it would only work intelligently toward its goal. In fact, as has often been pointed out, the ideas of the Enlightenment[99] really constituted a new religious faith, with human progress as its goal. A movement for the enfranchisement of the human spirit and the attainment of great new social ends for the world was in the air.

Although John Adams, writing in 1765, did not have in mind exactly the kind of renovation of human society that was thought of a generation later, his words bear quoting. "I always consider the settlement of America with reverence and wonder, as the opening of a grand scheme and design in Provi-

dence for the illumination and the emancipation of the slavish part of mankind all over the earth."[100]

The successful completion by the colonies against heavy odds of their War for Independence seemed to give a basis for the dream, and it was not an accident that when the Continental Congress, in 1782, adopted an American seal[101] it included with the date, MDCCLXXVI, the words *Novus Ordo Seclorum*—still a reminder on the dollar bills which we daily use that the fathers of the Republic felt that they were ushering in a new day for humanity. This nation was to be a great federated democratic republic, in which the inherent rights of man, including his freedom of worship, were to be protected, and the experiment made of separating Church and State, and doing so with mutual consent and sympathy. Here indeed was something new in the world. It was a brave attempt to eliminate one of the major causes of friction and hindrances to progress in the Old World.

We catch a glimpse of its world-wide significance by turning to the section in Condorcet's *De L'Influence de la Révolution de L'Amérique sur L'Europe,* which appeared in 1786. Here are emphasized with joy and enthusiasm such truths as the opportunity for the "perfectibility" of man given by the success of the American Revolution, the restoration of human rights brought about by the Declaration of Independence, and the new day for tolerance ushered in by the Virginia Bill for Establishing Religious Freedom.

Paine's writings[102] gave recognition of and impetus to these ideas to the public at large, as did in a more limited group those of Joel Barlow, especially his *Columbiad* (1807), which, as Curti has pointed out, comparing it with the earlier *Vision of Columbus,* took the ground that human nature and human institutions had an amazing opportunity for fresh, untrammeled development in America, if the effort were only made with sufficient earnestness and intelligence. He saw in his vision of democracy in this new land "The last ascending steps of her creating God."[103]

This faith in progress was enormously stimulated by the fact that the United States was a virgin continent as far as Western civilization was concerned. Here were vast areas which none but the Indian had ever known. The mere size of the continent, its plains, mountains, lakes, and rivers, forests, waterfalls, minerals, fertile lands—what we call today natural resources—all gave a sense of latent power and made the settlers feel that they had an opportunity to do creative work of a new character. This was also strengthened by the inherited conviction of Puritans that New England was a New Canaan and that they had an opportunity to work out here their religious ideals. The citizens of the emerging United States were virtually all Christian men who differed much in matters of Church membership and loyalty, and in theological belief,

and even, especially in the middle colonies, in national background, but they were one in their realization that God was their Father and that they were his children, and that there was in all of them a spark of the divine life which made them capable of great things if they would live worthy of their birthright.

It must be remembered in this connection, as Professor William Graham Sumner (1840–1907) used to tell his classes, that the immigration to this country has been made up, speaking generally, of the more ambitious and imaginative of the people of the Old World, those who had the courage to undertake long voyages and to endure hardships; and the experience of the early settlers in these respects was fully matched by that of the frontiersman in the West. They all felt that here was a new world in the making and that they would be able, with God's help, to share in making it.

And so through a combination of the ideas of the Enlightenment and the ideals of the Christian religion, together with the fact of the unspoiled land that lay around them, and the absence of most of the hampering bonds of an old civilization, they could start out on a new experiment in community living. In this one of the major features would be a fair field and no special favor for any religious body, with the old causes of jealousy due to favoritism removed, and with an opportunity for religious groups to dwell together in peace with much mutual sympathy and co-operation.

Section 8. THE REMARKABLE GROUP OF STATESMEN AND RELIGIOUS LEADERS INTERESTED IN RELIGIOUS FREEDOM

No list of the more important factors which produced the American system of Church-State separation—one of the distinctive contributions of America to the idea of government—would be complete without some reference to the extraordinary group of statesmen in America in the last third of the eighteenth century, and especially from 1775 to 1790. We have already listed the colonial advocates of religious freedom, and must now turn to the later group.[104] These men, and a few farsighted ministers of religion who supported them, were convinced that the emerging Federal government should have no connection with any Church and that religious freedom should prevail. There were a dozen or more such men who for ability and vision it would be hard to match in one country in any other time in history. Several of the leaders, and notably Jefferson, Madison, Mason, and Pinckney, knew the history of political philosophy and government in different parts of the world, and they had liberal ideas of liberty of conscience and its demands based on the theory of the natural rights of man. It is no exaggeration to say that their contribution in bringing about the separation of Church and State, first in Virginia, then in the United

States, with its resulting religious freedom, was epoch-making. We will show in another section[105] the influence that the American precedents in these respects had on the French Republic and on other developments in Europe.

In contrast with the leaders of the same cause in the colonial period, the majority in the new group was not from New England, but about half were from the South—five out of thirteen from the one state of Virginia; while the Episcopal Church, which was not represented in the earlier group, now comes to the front with its laymen—Baptist ministers taking the second place.

The new names are thirteen in number, beginning with Benjamin Franklin, who may be considered a link with the colonial leaders treated in the previous chapter. They are:

Benjamin Franklin (1706–90), nominal Episcopalian with Presbyterian background, Unitarian in belief
John Witherspoon (1723–94), Presbyterian
George Mason (1725–92), Episcopalian
Isaac Backus (1724–1806), Baptist
George Washington (1732–99), Episcopalian
Patrick Henry (1736–99), Episcopalian, with Presbyterian affiliations
Samuel Livermore (1732–1803), Episcopalian
Thomas Paine (1737–1809), Deist
John Carroll (1735–1813), Roman Catholic
Thomas Jefferson (1743–1826), nominal Episcopalian, Unitarian in belief
James Madison (1751–1836), Episcopalian
Charles Pinckney (1767–1824), Episcopalian
John Leland (1754–1841), Baptist

(1) BENJAMIN FRANKLIN, 1706–90, NOMINAL EPISCOPALIAN, UNITARIAN IN BELIEF

Franklin played such a major part in the movement to establish the American government, and has ever since had such a large influence on American ideals, that it seems necessary to consider at least briefly his views of religion and religious freedom. He is broadly known for his services as a discoverer and inventor, especially for the lightning rod; for his philanthropic efforts in promoting hospitals, libraries, and schools of learning, especially the University of Pennsylvania; for his scientific leadership in many fields, culminating in establishing the American Philosophical Assocation; for his distinguished work as author, editor, and printer; for his career as diplomat and statesman; for his ethical maxims; and for his outstanding work as a citizen of Philadelphia; but his contribution to the American ideal of religious toleration has seldom been emphasized. He was not influential in the sense that Madison and Jefferson were in bringing about the Constitutional separation of Church and State in the

United States; but his attitude was a factor of importance in the struggle, and, though he wrote relatively little on the subject, he was known to be a supporter of religion, an opponent of an Established Church, and a believer in religious freedom.

It is well for us to consider first his own religion and then his views of religious freedom—though the two are often brought together—because like almost all other leaders in the establishment of the United States he had a deep faith in both.

As to his religion, there has been, as in the case of Jefferson, much misapprehension. He was far from conventional or orthodox; but his belief in God, in prayer, and in the teachings of Jesus remained with him to the end, and in some respects was strengthened by his experience in later life.

He was brought up in the Puritan atmosphere of Boston, where he naturally absorbed much from his Calvinistic background, but his early reading and thinking tended to turn his thoughts in deistic directions, emphasizing reason rather than revelation, and liberty. Later he experienced a real sense of the existence of God.

I had been religiously educated as a Presbyterian; and tho' some of the dogmas of that persuasion, such as the eternal decrees of God, election, reprobation, etc., appeared to me unintelligible, others doubtful, and I early absented myself from the public assemblies of the sect, Sunday being my studying day, I never was without some religious principles. I never doubted, for instance, the existence of the Deity; that he made the world, and govern'd it by his Providence; that the most acceptable service of God was the doing good to man; that our souls are immortal; and that all crime will be punished, and virtue rewarded, either here or hereafter. These I esteem'd the essentials of every religion; and, being to be found in all the religions we had in our country, I respected them all, tho' with different degrees of respect, as I found them more or less mix'd with other articles, which without any tendency to inspire, promote, or confirm morality, serv'd principally to divide us, and make us unfriendly to one another. This respect to all, with an opinion that the worst had some good effects, induc'd me to avoid all discourse that might tend to lessen the good opinion another might have of his own religion; and as our province increas'd in people, and new places of worship were continually wanted, and generally erected by voluntary contribution, my mite for such purpose, whatever might be the sect, was never refused.[103]

He drew up his belief in the form of a creed with six clauses, and it may be said that he lived by this creed throughout his life.

That there is one God, who made all things.
That he governs the world by his providence.
That he ought to be worshipped by adoration, prayer, and thanksgiving.
But that the most acceptable service of God is doing good to man.

That the soul is immortal.

And that God will certainly reward virtue and punish vice, either here or hereafter.[107]

He also drew up forms of adoration and of petition to enable him to live by this creed, as well as a statement of his reasons for believing in it, all breathing a spirit of sincere conviction.[108]

He frequently urged the importance of worship; supported Whitefield's efforts to convert people to Christianity and to make them more effective Christians; urged that "a better sample of Christians" should be found on the Western frontier, settling it with "a large strong body of religious and industrious people";[109] printed copies of the Bible; regularly contributed to the support of the Presbyterian Church in Philadelphia, attending its services occasionally; and was sufficiently interested in the Episcopal Church to issue a revised edition of the *Book of Common Prayer*. Here is a quotation from the preface:

The editor of the following abridgment of the Liturgy of the Church of England thinks it but decent and respectful to all, more particularly to the reverend body of clergy, who adorn the Protestant religion by their good works, preaching, and example, that he should humbly offer some reasons for such an undertaking. He addresses himself to the serious and discerning. He professes himself to be a Protestant of the Church of England, and holds in the highest veneration the doctrines of Jesus Christ. He is a sincere lover of social worship, deeply sensible of its usefulness to society; and he aims at doing some service to religion by proposing such abbreviations and omissions in the forms of our Liturgy (retaining every thing he thinks essential) as might, if adopted, procure a more general attendance. . . .[110]

His belief in divine guidance was shown by his urging upon Congress in a critical moment that its members should be led in prayer, an event of such significance that we describe it at length elsewhere.[111] But more important for our purpose was his definite conviction that Christian principles should be introduced into government. Writing from Paris, he said: "He who shall introduce into public affairs the principles of primitive Christianity will change the face of the world."[112] By this statement he showed himself a good Christian pragmatist more than a century before William James made pragmatism popular. He also showed on various occasions his belief that the nation and its citizens were in the hands of God and should seek his guidance.

His fundamental belief in a Divine Providence is well expressed in a letter to the *Federal Gazette*, published April 8, 1788. He said:

To conclude, I beg I may not be understood to infer, that our general Convention was divinely inspired when it form'd the new federal Constitution, merely because that Constitution has been unreasonably and vehemently opposed, yet I must own I

have so much Faith in the general Government of the World by PROVIDENCE, that I can hardly conceive a Transaction of such momentous Importance to the Welfare of Millions now existing, and to exist in the Posterity of a great Nation, should be suffered to pass without being in some degree influenc'd, guided and governed by that omnipotent, omnipresent & beneficent Ruler, in whom all inferior Spirits live & move and have their Being.[113]

His writings contain many other references to his belief in God and in the work of pure religion.[114] One of his most revealing letters is that written to his daughter urging her to "go constantly to church" and advising her to "never miss the prayer days."[115]

His antipathy in the field of religion was to dogma, not to the Christian way of life, for which he had great respect. In a letter to his father under date of April 13, 1738, he says:

My mother grieves that one of her sons is an Arian, another an Arminian. What an Arminian or an Arian is, I cannot say that I very well know. The truth is I make such distinctions very little my study. I think vital religion has always suffered when orthodoxy is more regarded than virtue; and the Scriptures assure me that at the last day we shall not be examined what we *thought,* but what we *did;* and our recommendation will not be that we said, *Lord! Lord!* but that we did good to our fellow creatures. See Matt. XXV.[116]

This same thought is brought out in a letter to his father under date of April 13, 1778.

I have your favours of the 21st of March, in which you both seem concerned lest I have imbibed some erroneous opinions. Doubtless I have my share; and when the natural weakness and imperfection of human understanding is considered, the unavoidable influence of education, custom, books, and company upon our ways of thinking, I imagine a man must have a good deal of vanity who believes, and a good deal of boldness who affirms, that all the doctrines he holds are true, and all he rejects are false. And perhaps the same may be justly said of every sect, church, and society of men, when they assume to themselves that infallibility, which they deny to the Pope and councils.

I think opinions should be judged of by their influences and effects; and, if a man holds none that tend to make him less virtuous or more vicious, it may be concluded he holds none that are dangerous; which I hope is the case with me.[117]

His lack of dogmatism and ecclesiasticism, along with his faith in God and in righteous conduct, led to his becoming very active in Freemasonry—a movement, which, as we have seen,[118] did much to bring about religious toleration in this country, especially among different Protestant groups and between Protestants and Jews. Closely related to this was his interest in forming, in

1728, the Philadelphia club known as "The Junto" suggested by Mather's *Essays To Do Good.* In an address before it he advanced his ideal of different religious exponents working together to advance human welfare.

Another incident showing his broad tolerance is that of the philosopher Benjamin Franklin aiding the evangelist George Whitefield.[119] He was active in 1740 in helping to erect a building in Philadelphia for the services of Whitefield, who could not find adequate accommodations elsewhere because the conservative churches were opposed to his message and methods. There was much about the preacher of which Franklin could not approve, but he thought his general influence good, entertained him on all his visits to Philadelphia, listened to most of his sermons, published them, and often defended their author in public print. This was a good example of his religious toleration. He said:

> The design in building not being to accommodate any particular sect, but the inhabitants in general so that even if the Mufti of Constantiniple were to send a missionary to preach Mohammedanism to us he would find a pulpit at his service.[120]

He opposed all forms of Church Establishment, believing that the churches should be voluntarily supported. "The Church, the State and the Poor are three daughters which we should maintain, but not portion off."[121]

And Franklin did what he could and most generously to "maintain" the churches, showing his broad tolerance by contributing to Presbyterians, Quakers, Episcopalians, Moravians—whom he specially admired for not reducing their creed to writing—and others. In his letter to President Ezra Stiles of Yale, written only a few months before his death, after stating that "the system of morals" and the "religion" of Jesus of Nazareth "as he left them to us" were in his opinion "the best the world ever saw or is likely to see,"[122] and affirming his full belief in the goodness of God, he added:

> I have ever let others enjoy their religious sentiments, without reflecting on them for those that appeared to me unsupportable and even absurd. All sects here, and we have a great variety, have experienced my good will in assisting them with subscriptions for building their new places of worship; and, as I have never opposed any of their doctrines, I hope to go out of the world in peace with them all.[123]

His *Parable Against Persecution,* first published in 1764, is a classic. It was an adaptation by Franklin of an ancient Persian story. He had it printed and incorporated in his copy of the Bible, and frequently read it to his friends, who were discomfited by not recognizing the changes in what purported to be the 51st Chapter of the Book of Genesis. In the parable Abraham rebukes a stranger for not worshipping "the most high God" in the accepted Jewish manner. He later repents when God asks, "Couldst not thou, that art thy self a

sinner, bear with him one night?" Abraham replies, "Lo, I have sinned, forgive me, I pray thee." As a result, God changes his threatened affliction of his descendants into a blessing. The brief chapter—only fifteen verses—well deserves reading.[124]

Franklin's views of the importance of the independence of Church and State are characteristically expressed in a letter to Dr. Richard Price, October 9, 1780:

> I am fully of your opinion respecting religious tests; but, though the people of Massachusetts have not in their new constitution kept quite clear of them, yet, if we consider what that people were one hundred years ago, we must allow they have gone great lengths in liberality of sentiment on religious subjects; and we may hope for greater degrees of perfection, when their constitution, some years hence, shall be revised. If Christian preachers had continued to teach as Christ and his Apostles did, without salaries, and as the Quakers now do, I imagine tests would never have existed; for I think they were invented, not so much to secure religion itself, as the emoluments of it. When a religion is good, I conceive that it will support itself; and, when it cannot support itself, and God does not take care to support it, so that its professors are obliged to call for the help of the civil power, it is a sign, I apprehend, of its being a bad one. . . .[125]

This was in keeping with one of his fundamental political tenets, that governmental powers should be narrow, not broad, leaving most matters to voluntary effort and public opinion.

But his religious liberalism and belief in toleration did not carry him over into the group of radicals represented by Thomas Paine. An unknown friend submitted a manuscript to him in which questions of religion and providence were critically discussed. Franklin read it with interest, but, realizing the importance of religion to public and private morality, he wrote to the author:

> I would advise you, therefore, not to attempt unchaining the tiger, but to burn this piece before it is seen by another person; whereby you will save yourself a great deal of mortification by the enemies it may raise against you, and perhaps a good deal of regret and repentance. If men are so wicked *with religion,* what would they be *if without it*?[126]

It was this pragmatic influence of religion that made Franklin recognize that the people of the United States could not get along without it. He shows this in "A Lecture on The Providence of God in the Government of the World." The concluding words of this address are significant:

> . . . I conclude that believing in Providence we have the foundation of all true religion; for we should love and revere the Deity for his goodness, and thank him for his benefits; we should adore him for his wisdom, fear him for his power, and pray to

him for his favor and protection. And this religion will be a powerful regulator of our actions, give us peace and tranquility within our own minds and render us benevolent, useful and beneficial to others.[127]

(2) JOHN WITHERSPOON, 1723–94, PRESBYTERIAN

This patriot-educator-theologian did much by his temper of mind and work to encourage the cause of freedom and to adjust his great Church to conditions in a democracy. Before coming to America, Witherspoon had rendered yeoman service in Scotland in defending the right of the people to choose their own ministers and in opposing the theory of a State Church. He came to this country in 1768 to accept the presidency of the College of New Jersey, and from his Princeton home soon identified himself with the patriot cause, serving in the Continental Congress most of the time from 1776 to 1782, and effectively urging there the cause of independence. He advocated colonial unity and other measures "until American liberty is settled on a solid basis."[129]

On taking up his duties at Princeton he announced that he was starting graduate courses to "fit young Gentlemen for serving their Country in public Stations."[130] This he did by instructing them in the principles of government and inspiring them to public service in a Christian spirit. James Madison, to whom the cause of political and religious freedom owes so much, was among those who profited greatly by his teaching and example.[131] It is a striking fact that nine of the graduates of the College of New Jersey (Princeton) were members of the Federal Constitutional Convention in 1787.[132] These men had mostly come under the direct influence of Witherspoon. To Witherspoon patriotism involved a love of liberty and a regard for religion. He said in a sermon to the students at Princeton, May 17, 1776, six weeks before the Declaration of Independence: "God grant that in America true religion and civil liberty may be inseparable."[133]

His introduction of such subjects of study at the college as French and history; his use of Montesquieu's *Spirit of Laws* as a class textbook; his services as a conciliator between Old Side and New Side Presbyterianism; his political liberalism as shown by his signing the Declaration of Independence; his work in bringing about close association between his Church and the Congregationalists of New England; his leadership in organizing the Presbyterian Church on broad, national lines; his coining of the word "Americanism" to indicate the differences between English and American linguistic usage; his opposition to all forms of tyranny; his encouraging a generous attitude of mind in his students who later had a powerful influence in the older communities of the Middle Atlantic region and on the frontier; his advocacy of "a liberal or noble turn of mind"[134] and of a philosophy of common sense rather than of

metaphysical speculation—all these indicate his services to the cause of political and religious liberty.

As early as 1772 he called himself "an opponent of lordly domination and sacerdotal tyranny,[135] and under these phrases clearly intended to include not only Roman Catholic and Episcopal claims and actions but those of the Church–State Presbyterians.

In his address before the Congress in Philadelphia July 30, 1776, Witherspoon, referring to the "great improvements" which had taken place in history not only in human knowledge but also in human nature, mentioned first "the liberal sentiments that now prevail upon the rights of conscience. . . ."[136]

In November, 1776, he was appointed chairman of a committee of Congress to prepare an address to the inhabitants of America and recommendations to the various states for a day of fasting, humiliation, and prayer. The address was framed especially "to excite the inhabitants of Pennsylvania, New Jersey and the adjacent states to an immediate and spirited exertion in opposition to the army that now threatens to take possession of this city" (Philadelphia). Although no manuscript copies of these documents are found among the papers of the Continental Congress, Witherspoon's biographer includes them because the "style and temper of the recommendation as published strongly indicate" that he was the author, a fact antecedently probable in view of his chairmanship of the committee and his active interest in such proposals.

Whereas, the war in which the United States are engaged with Great Britain, has not only been prolonged, but is likely to be carried to the greatest extremity; and whereas, it becomes all public bodies, as well as private persons, to reverence the Providence of God, and look up to him as the supreme disposer of all events, and the arbiter of the fate of nations; therefore,

Resolved that it be recommended to all the United States, as soon as possible, to appoint a day of solemn fasting and humiliation; to implore of Almighty God the forgiveness of the many sins prevailing among all ranks, and to beg the countenance and assistance of his Providence in the prosecution of the present just and necessary war.

The Congress do also, in the most earnest manner, recommend to all the members of the United States, and particularly the officers civil and military under them, the exercise of repentance and reformation; and further, require of them the strict observation of the articles of war, and particularly, that part of the said articles, which forbids profane swearing, and all immorality, of which all said officers are desired to take notice.

It is left to each State to issue out proclamations fixing the days that appear most proper within their several bounds.[137]

A few quotations from his sermons and addresses will show more defi-

nitely his emphasis on religious liberty. In a sermon on "The Dominion of Providence over the Passions of Men," preached at Princeton, May 17, 1776, on the occasion of a "General Fast" appointed by Congress, Dr. Witherspoon said:

There is not a single instance in history in which civil liberty was lost, and religious liberty preserved entire. . . . Whoever is an avowed enemy of God, I scruple not to call him an enemy to his country. Do not suppose, my brethren, that I mean to recommend a furious and angry zeal for the circumstantials of religion, or the contentions of one sect with another about their peculiar distinctions. I do not wish you to oppose any body's religion, but every body's wickedness. Perhaps there are few surer marks of the reality of religion, than when a man feels himself more joined in spirit to a truly holy person of a different denomination, than to an irregular liver of his own. . . .[138]

He expressed similar views in a "Sermon delivered at a Public Thanksgiving after Peace":

. . . Hence it clearly follows, that the teachers and rulers of every religious denomination are bound mutually to each other, and to the whole society, to watch over the manners of their several members. . . . If you ask me, what are the means which civil rulers are bound to use for attaining these ends, further than the impartial support and faithful guardianship of the rights of conscience? I answer that example itself is none of the least. . . .[139]

In his paper on "Observations on the Improvement of America" (undated), he came back again to this matter of liberty of conscience:

1. The moral causes of the prosperity of a country, are almost infinitely more powerful than those that are only occasional. This observation is taken from Montesquieu, by whom it is admirably illustrated, and it ought never to be out of view, with those who wish to promote the general good. The moral causes arise from the nature of the government, including the administration of justice, liberty of conscience, the partition of property. . . . Therefore, a sacred regard should be had by every lover of mankind, to the principles of equity and liberty, that they may never be violated by any public proceedings. Pennsylvania is so happy in this particular, that its constitution need not be improved, but preserved and defended. . . .[140]

According to Morris he went so far as to put "the impartial support and faithful guardianship of the rights of conscience first among duties of officers of State."[141]

Two recent historians, Professors Morison and Commager, in their standard work *The Growth of the American Republic* pay this tribute to his work for religious freedom:

. . . He was forever preaching that mere toleration was not enough, for that implied superiority and condescension; the only proper principle for a republic was complete

liberty to worship how one chose or not at all, and every church should be supported by its own members or funds without help from the taxing power of the state. Witherspoon's pupils, among whom James Madison was conspicuous, were always to be found on the side of religious liberty.[142]

He was apparently proud that in his State, New Jersey, where his own influence was so great, there was "no profession of religion which has an exclusive establishment."[143] This was a statement in reply to an inquiry of the Marquis de Marbois, the French diplomat who was accredited to this country from 1779 to 1785. Perhaps his influence on Church–State separation was historically greatest through James Madison and the Presbyterians in the Shenandoah Valley who supported him in the Virginia battles.[144]

A remarkable letter written by Witherspoon opposing a constitutional provision in Georgia for the exclusion of clergymen from certain public offices is printed in a later chapter.[145] It was contrary to his idea of religious freedom that a citizen, merely because he happened to be a clergyman, should be prevented from public service if he conscientiously felt that this was his duty. Even more his theory of the separation of Church and State led him to think that such a regulation involving the clergy as such was a matter that should be the result of public opinion acting through an ecclesiastical assembly, not a political one.

(3) GEORGE MASON, 1725–92, EPISCOPALIAN

This liberal churchman and publicist is one of the outstanding figures in the story of religious freedom in America. He attended no college, but studied in the unusually fine library of his uncle, John Mercer. Here were some fifteen hundred books, a third of them in law. It was also rich in many kindred fields. Mason acquired from this reading a remarkably good working knowledge of the history and philosophy of government. He never was admitted to the bar as an attorney, but was consulted by the leading men of Virginia on matters of public law and government.

He was a vestryman of Truro parish in Virginia from 1748 to 1785, and supervised the building of Pohick Church. He combined interest in the State with interest in the Church. It is not necessary to go into his public career in detail. Suffice it to say that he wrote the Declaration of Rights of Virginia and most of the state constitution. The former was of particular significance, as it formed the basis on which the other states and the Federal government itself took action to guarantee religious freedom. It was drawn upon by Thomas Jefferson for the first part of the Declaration of Independence, and was later the basis of the Federal Bill of Rights. The clause regarding religious liberty, as originally drafted by Mason, read:

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, the happiness, or the safety of society. And that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.[146]

Attention has been called to the similarity of this clause to the statements on the rights of conscience made by the Independents at the Westminster Assembly of Divines, first called by Parliament in 1643, which so profoundly influenced Presbyterianism.

James Madison objected to the word "toleration," as implying a system in which "the free exercise of religion was permissive, instead of an unquestioned natural right."[147] Madison's intention, as he tells us, was "to substitute for the idea expressed by the term 'toleration' an absolute and equal right in all to the exercise of religion according to the dictates of conscience."[148] He also objected to the clause giving the courts power to punish one who disturbed the peace in the practice of his religion. He proposed as a substitute:

That religion, or the duty we owe to our Creator, and the manner of discharging it, being under the direction of reason or conviction only, not of violence or compulsion, all men are equally entitled to the full and free exercise of it, according to the dictates of conscience, and, therefore, that no man or class of men ought, on account of religion, to be invested with peculiar emoluments or privileges, nor subjected to any penalties or disabilities unless under color of religion, the preservation of equal liberty and the existence of the state be manifestly endangered.[149]

This clause was further modified by the committee of the whole, and as finally adopted by the convention, June 12, 1776, included the first and last portions of Mason's original draft verbatim and the middle section somewhat altered. It read:

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.[150]

When the Virginia Assembly first met under the state constitution, which was adopted June 29, 1776, it took steps to put into definite law the provisions of the Virginia Declaration of Rights regarding religious liberty. George Mason very naturally was chosen as chairman of the committee appointed to prepare

a suitable act. Here is the form in which it was adopted. It is Chapter II of the laws of the session, entitled

An act for exempting the different societies of Dissenters from contributing to the support and maintenance of the church as by law established, and its ministers, and for other purposes therein mentioned.

At a General Assembly, begun and held at the Capitol in the City of Williamsburg, on Monday the seventh day of October in the year of our Lord one thousand seven hundred and seventy six, and in the first year of the Commonwealth.

I. WHEREAS several oppressive acts of parliament respecting religion have been formerly enacted, and doubts have arisen, and may hereafter arise, whether the same are in force within this commonwealth or not: For prevention whereof, *Be it enacted by the General Assembly of the commonwealth of Virginia, and it is hereby enacted by the authority of the same,* That all and every act of parliament, by whatever title known or distinguished, which renders criminal the maintaining any opinions in matters of religion, forbearing to repair to church, or the exercising any mode of worship whatsoever, or which prescribes punishments for the same, shall henceforth be of no validity or force within this commonwealth.

II. And whereas there are within this commonwealth great numbers of dissenters from the church established by law who have been heretofore taxed for its support, and it is contrary to the principles of reason and justice that any should be compelled to contribute to the maintenance of a church with which their consciences will not permit them to join, and from which they can therefore receive no benefit: For remedy whereof, and that equal liberty, as well religious as civil, may be universally extended to all the good people of this commonwealth, *Be it enacted by the General Assembly of the commonwealth of Virginia, and it is hereby enacted by the authority of the same,* That all dissenters, of whatever denomination, from the said church, shall, from and after the passing this act, be totally free and exempt from all levies, taxes and impositions whatever, towards supporting and maintaining the said church, as it now is or hereafter may be established, and its ministers.

III. *Provided nevertheless, and it is farther enacted, by the authority aforesaid,* That the vestries of the several parishes, where the same hath not been already done, shall and may, and they are hereby authorised and required, at such time as they shall appoint, to levy and assess on all tithables within their respective parishes, as well dissenters as others, all such salaries and arrears of salaries as are or may be due to the ministers or incumbents of their parishes for services to the first day of January next; moreover to make such assessments on all tithables as will enable the said vestries to comply with their legal parochial engagements already entered into; and lastly, to continue such future provision for the poor in their respective parishes as they have hitherto by law been accustomed to make.

IV. *And be it farther enacted, by the authority aforesaid,* That there shall in all time coming be saved and reserved to the use of the church by law established the several tracts of glebe land already purchased, the churches and chapels already built, and

such as were begun or contracted for before the passing of this act for the use of the parishes, all books, plate, and ornaments, belonging or appropriated to the use of the said church, and all arrears of money or tobacco arising from former assessments or otherwise; and that there shall moreover be saved and reserved to the use of such parishes as may have received private donations, for the better support of the said church and its ministers, the perpetual benefit and enjoyment of all such donations.

V. And whereas great variety of opinions hath arisen, touching the propriety of a general assessment, or whether every religious society should be left to voluntary contributions for the support and maintenance of the several ministers and teachers of the gospel who are of different persuasions and denominations, and this difference of sentiments cannot now be well accommodated, so that it is thought most prudent to defer this matter to the discussion and final determination of a future assembly, when the opinions of the country in general may be better known: To the end, therefore, that so important a subject may in no sort be prejudged, *Be is enacted, by the authority aforesaid,* That nothing in this act contained shall be construed to affect or influence the said question of a general assessment, or voluntary contribution, in any respect whatever.

VI. And whereas, by the exemptions allowed dissenters, it may be too burthensome in some parishes to the members of the established church if they are still compelled to support the clergy by certain fixed salaries, and it is judged best that this should be done for the present by voluntary contributions: *Be it therefore enacted, by the authority aforesaid,* That so much of an act of the general assembly made in the twenty-second year of the reign of king George the second, intituled An act for the support of the clergy, and for the regular collecting and paying the parish levies, or any other act as provides salaries for the ministers, and authorises the vestries to levy the same, except in the cases before directed, shall be and the same is hereby suspended, until the end of the next session of Assembly. . . .[151]

Mason, writing in 1778 to his cousin, Colonel George Mercer, then in London, sent him a draft of the Bill of Rights as it had been drawn by him and presented to the Virginia convention. In this letter he said: "It received few alterations, some of them I think not for the better." He added: "We have laid our new government upon a broad foundation, and have endeavored to provide the most effectual securities for the essential rights of human nature, both in civil and religious liberty."[152]

Mason was a frequent and effective speaker in the Federal Constitutional Convention of Philadelphia, though he did not sign the constitution because of what he believed to be certain defects, notably the recognition given by the Constitution to slavery, which he considered "diabolical in itself and disgraceful to mankind," and because of its omitting a bill of rights. It took more than two generations for the first error to be corrected, but the second was promptly remedied in the first group of amendments proposed by Congress in 1789.[153]

(4) ISAAC BACKUS, 1724–1806, BAPTIST

The name of Backus is little known even to the intelligent public today, but he is one of the small band of fearless, farsighted men living in the Revolutionary period to whom we owe our religious freedom. Indeed, the *Dictionary of American Biography* in its sketch of him[154] considers him the greatest advocate of the cause in this country since Roger Williams.[155] Profoundly influenced by the preaching of Whitefield in the Great Awakening, he became a Separatist Congregational minister in his native state, Connecticut. In 1748 he moved to Middleborough, Massachusetts. Here he early showed his lifelong opposition to all ideas of Church–State connection by refusing to pay a tax of five pounds toward the support of the standing order, Congregationalism. Convinced of the importance of individual Christian conviction as a basis of church membership, he formed, with the aid of some of his former New Light adherents, a Baptist Church in Middleborough. This he served as pastor for half a century. In 1770 he wrote *A Seasonable Plea for Liberty of Conscience,* and the following year appeared from his pen *A Letter to a Gentleman in the Massachusetts General Assembly Concerning Taxes to Support Religious Worship.* He became increasingly interested in the cause of freeing the Church from all forms of State or civil control. From 1772 on, he served as the agent of the Warren Association in Massachusetts to deal with relations with the state and to present clearly the grievances of Baptists. He published in 1773 *An Appeal to the Public for Religious Liberty,* opposing the blending of civil and ecclesiastical authority in his state. He followed this by *The Exact Limits between Civil and Ecclesiastical Government, True Policy requires Equal Religious Liberty, A Door opened for Christian Liberty,* and other works.[156] These all contributed effectively to the cause of religious freedom through their advocacy of entire separation of Church and State.

In his diary for September 7, 1774, Backus speaks of meeting some of his friends at the commencement of the College of Rhode Island (Brown), including President Manning. He found that

> all were in earnest for me to go to the Association and also to the Congress at Philadelphia, and represented that now was the most likely time to obtain our religious liberty that we had ever known. I had many objections against it, but when I awoke next morning, the religious liberties of three colonies or more, appeared so weighty to my mind that, if I might do anything for their relief, I was made willing to do it, and leave my private concerns to him that orders all things.[157]

Members of the Warren Association, the influential group of Baptists to which he belonged, were also unanimous that he should carry out this mis-

sion, and contributed generously to his expenses. It gave him an official letter of commendation signed by the moderator and clerk.

To the Honorable Delegates of the several colonies in North America, met in a general Congress in Philadelphia:

HONORABLE GENTLEMEN: As the Antipaedobaptist churches in New England are most heartily concerned for the preservation and defense of the rights and privileges of this country, and are deeply affected by the encroachments upon the same, which have lately been made by the British parliament, and are willing to unite with our dear countrymen, vigorously to pursue every prudent measure for relief, so we would beg leave to say that, as a distinct denomination of Protestants, we conceive that we have an equal claim to charter-rights with the rest of our fellow-subjects; and yet have long been denied the free and full enjoyment of those rights, as to the support of religious worship. Therefor we, the elders and brethren of twenty Baptist churches met in Association at Medfield, twenty miles from Boston, September 14, 1774, have unanimously chosen and sent unto you the reverend and beloved Mr. Isaac Backus as our agent, to lay our case, in these respects, before you, or otherwise to use all the prudent means he can for our relief.[158]

On reaching Philadelphia he met with representatives of Baptist churches from several colonies, and a committee was named to confer with the delegates from the province of Massachusetts and others. The meeting was opened by the reading by President Manning of a memorial on the chief religious grievances of the Massachusetts Baptists. It claimed the right of liberty of conscience, both as a natural and charter right, and complained that this right had been repeatedly violated by the General Assembly. It closed with these words:

It may now be asked, *What is the liberty desired?* The answer is: As the kingdom of Christ is not of this world, and religion is a concern between God and the soul, with which no human authority can intermeddle, consistently with the principles of Christianity, and according to the dictates of Protestantism, we claim and expect the liberty of worshipping God according to our consciences, not being obliged to support a ministry we cannot attend, whilst we demean ourselves as faithful subjects. These we have an undoubted right to, as men, as Christians, and by charter as inhabitants of Massachusetts Bay.[159]

Backus states that the Massachusetts delegates attempted to answer these complaints. His account of the interview is interesting as showing public opinion at the time on the subject of freedom of conscience:

John Adams made a long speech and Samuel Adams another; both of whom said, "There is, indeed, an ecclesiastical establishment in our province; but a very slender one, hardly to be called an establishment." When they would permit, we brought up facts, which they tried to explain away, but could not. Then they shifted their plea, and asserted that our General Court was clear of blame, and had always been ready to hear

our complaints, and to grant all reasonable help, whatever might have been done by executive officers; and S. Adams and R. T. Paine spent near an hour more on this plea. When they stopped, I told them I was very sorry to have any accusations to bring against the government which I belonged to, and which I would gladly serve to the utmost of my power, but I must say that facts proved the contrary to their plea; and gave a short account of our Legislature's treatment of Ashfield, which was very puzzling to them. In their plea, S. Adams tried to represent that *regular* Baptists were quite easy among us; and more than once insinuated that these complaints came from enthusiasts who made it a merit to suffer persecution; and also that enemies had a hand therein. Paine said, there was nothing of conscience in the matter; it was only a contending about paying a little money; and also that we would not be neighborly and let them know who we were, which was all they wanted, and they would readily exempt us.

In answer, I told them they might call it enthusiasm or what they pleased; but I freely own, before all these gentlemen, that it is absolutely a point of conscience with me; for I cannot give in the certificates they require without implicitly acknowledging that power in man which I believe belongs only to God. This shocked them; and Cushing said: *"It quite altered the case;* for if it were a point of conscience, he had nothing to say to that." And the conference of about four hours continuance, closed with their promising to do what they could for our relief; though to deter us from thinking of their coming upon equal footing with us as to religion, John Adams at one time said, we might as well expect a change in the solar system, as to expect they would give up their establishment.[160]

This same year Backus wrote a strong letter to the Massachusetts Assembly protesting against the Baptist grievances in the state, and saying that they were much more serious than the three-penny tax on tea, which anyone could avoid by abstaining from tea drinking. It was an application of the taxation-without-representation plea which he often used in the field of church support.[161]

The following year (1775) at a meeting of the Massachusetts Assembly, held in spite of the absence of the governor under advice of the Continental Congress, the Warren Association, again acting under the stimulus of Backus, presented another resolution on the subject of religious freedom:

Our real grievances are, that we, as well as our fathers, have, from time to time, been taxed on religious accounts where we were not represented; and when we have sued for our rights, our causes have been tried by interested judges. That the Representatives in former Assemblies, as well as the present, were elected by virtue only of civil and worldly qualifications, is a truth so evident, that we presume it need not be proved to this Assembly; and for a civil Legislature to impose religious taxes, is, we conceive, a power which their constituents never had to give; and is therefore going entirely out of their jurisdiction. . . . Under the legal dispensation, where God himself prescribed the exact proportion of what the people were to give, yet none but persons of the worst

characters ever attempted to *take it by force*. I Sam. ii. 12, 16; Mic. iii. 5–9. How daring then, must it be for any to do it for Christ's ministers, who says, *My kingdom is not of this world!* . . . We beseech this honorable Assembly to take these matters into their wise and serious consideration, before him who has said, With what measure ye mete it shall be measured to you again. Is not all America now appealing to heaven against the injustice of being taxed where we are not represented, and against being judged by men who are interested in getting away our money? And will heaven approve of your *doing the same thing* to your fellow servants? No, surely. . . . We have no desire of representing this government as the worst of any who have imposed religious taxes; we fully believe the contrary. Yet, as we are persuaded that an entire freedom from being taxed by civil rulers to religious worship, is not a mere favor, from any man or men in the world, but a right and property granted us by God, who commands us to stand fast in it, we have not only the same reason to refuse an acknowledgment of such a taxing power here, as America has the above-said power, but also, according to our present light, we should wrong our consciences in allowing that power to men, which we believe belongs only to God.[162]

This memorial was duly read in the Assembly the three times required by law, was debated, and resulted in the introduction of the necessary bill to carry out its requirements. "But," according to Backus, "then other business was crowded in, and nothing more done upon it. Such is the disposition of mankind. . . ."

He was always advocating the same cause from pulpit and platform. He even journeyed to Philadelphia a second time, in 1787, to present it before the Constitutional Convention. Here we know that as a representative of the Baptists of New England he urged that provision be made for liberty of conscience and for protection against the taxation demands of a State-Church.[163]

An ardent patriot in the Revolution, he believed that independence could be made to promote his views of freedom of conscience, so that when the new government was formed he urged adequate Constitutional safeguards in this field. He was chosen a delegate to the Massachusetts convention called in 1788 to consider ratifying the Federal Constitution. He first thought that he should not go, "but as religious liberty is concerned in the affair, and many were earnest for my going, I consented."[164] Most of the Baptists who were delegates felt that the Constitutional guarantees of religious freedom were inadequate, but Backus decided to vote for ratification. "The exclusion of any hereditary, lordly power, and of any religious test, I view as our greatest securities in this constitution."[165]

In the convention there were also many who opposed ratification because of the very omission of some religious test. In trying to remove their opposition on this ground he made a weighty utterance which well sums up the major conviction of his public life—that religious freedom was of itself a great blessing:

Mr. President, I have said very little in this honourable Convention; but I now beg leave to offer a few thoughts upon some points in the Constitution proposed to us. And I shall begin with the exclusion of any religious test. Many appear to be much concened about it, but nothing is more evident, both in reason, and in the holy scriptures, than that religion is ever a matter between God and individuals; and therefore no man or men can impose any religious test, without invading the essential prerogatives of our Lord Jesus Christ. Ministers first assumed this power under the Christian name; and then Constantine approved of the practice, when he adopted the profession of Christianity, as an engine of state-policy. And let the history of all nations be searched, from that day to this, and it will appear that the imposing of religious tests hath been the greatest engine of tyranny in the world. And I rejoice to see so many gentlemen who are now giving in to the rights of conscience, in this great and important matter. Some serious minds discover a concern lest, if all religious tests should be excluded, the Congress would hereafter establish Popery, or some other tyrannical way of worship. But it is most certain, that no such way of worship can be established, without any religious test. . . .[166]

No man of his generation devoted his time and thought more consistently and unselfishly to the cause of religious freedom.

(5) GEORGE WASHINGTON, 1732–99, EPISCOPALIAN

Washington's major contribution to the cause of religious freedom came after the establishment of our government, so it will be dealt with in a later section where we take up his "Farewell Address" in 1796 and his other utterances on religion and religious freedom.[167] There we will show, especially through his letters to the various religious denominations that congratulated him on his election to the presidency, his tolerant attitude toward all faiths. Furthermore, in his Thanksgiving Day proclamation of 1789, when he referred to the civil and religious liberty with which we are blessed, and in other public statements, he gave evidence of his conviction that religion was essential as an undergirding of the new State, and that all religious bodies must be treated alike by the government.

Because of these contributions we have added his name in this section on "Leaders Interested in Religious Freedom," although he should be considered as a supporter of this movement rather than as one who played an important part in initiating it prior to the adoption of our Constitutional guarantees. Indeed, in an earlier time he had favored the assessment plan in Virginia by which the state would make contributions to the various Christian denominations, although he gave this up when he found that it was becoming a cause of friction and acrimonious debate.[168]

As we shall see, his primary interests in religion as far as the nation was concerned were twofold: that the citizens should recognize its importance; and

that in the interest of harmony all religions should be treated alike by the State. He manifested these convictions both by his own life, involving loyal attachment to the Episcopal Church, in which he had been brought up, along with his interest in other religious bodies, a tolerant spirit in all matters that had to do with religion and the Churches, and a strict observance in all his public relations of the religious freedom and Church-State guarantees of the Constitution.

(6) PATRICK HENRY, 1736–99, EPISCOPALIAN WITH PRESBYTERIAN AFFILIATIONS[169]

Patrick Henry did not speak as frequently of religious liberty as he did of civil liberty, and yet he made substantial contributions to the former cause, seeing clearly that the two types of liberty were closely related. When he exclaimed at the Virginia convention in 1775 at St. John's Episcopal Church, Richmond, "Give me Liberty or give me death," he undoubtedly had the political liberty of the people of Virginia primarily in mind, but the implications in the field of religious liberty were inevitable.

He was definitely opposed both to any Church having an exclusive State position and to the British government interfering in any way in Virginia's affairs involving religion. This attitude first came prominently to the fore in 1763, when he represented a Virginia vestry outraged by the union of the Episcopal clergy with the king in council in trying to thwart the will of the people in the matter of commuting the payment of salaries to the clergy in a way authorized by the Assembly. The case—known as the Parsons' Cause—will be considered later.[170] Here suffice it to say that his advocacy of this somewhat complicated case began his deep interest both in weakening the strangle hold of the Episcopal clergy and in freeing Virginia's religious life from any link with the British crown.

A manuscript prepared, according to his biographers, about 1766, gives his early views on the subject of religious freedom.

> Much learning hath been displayed to show the necessity of establishing one church in England in the present form. But these reasonings do not reach the case of this colony. . . .
>
> . . . A general toleration of Religion appears to me the best means of peopling our country, and enabling our people to procure those necessarys among themselves, the purchase of which from abroad has so nearly ruined a colony, enjoying, from nature and time, the means of becoming the most prosperous on the continent. . . .
>
> . . . When I say that the article of religion is deemed a trifle by our people in the general, I assert a known truth. But when we suppose that the poorer sort of European emigrants set as light by it, we are greatly mistaken. The free exercise of religion hath stocked the Northern part of the continent with inhabitants; and altho'

Europe hath in great measure adopted a more moderate policy, yet the profession of Protestantism is extremely inconvenient in many places there. A Calvinist, a Lutheran, or Quaker, who hath felt these inconveniences in Europe, sails not to Virginia, where they are felt perhaps in a (greater degree).[171]

The Baptist historian Semple has recorded the obligations of his fellow Baptists to Henry at the time of their persecution. In his *History of the Baptists in Virginia,* he tells of their attempts to obtain liberty, and adds:

It was in making these attempts that they were so fortunate as to interest in their behalf the celebrated Patrick Henry; being always a friend of liberty, he only needed to be informed of their oppression; without hesitation he stepped forward to their relief. From that time, until the day of their complete emancipation from the shackles of tyranny, the Baptist found in Patrick Henry an unwavering friend. May his name descend to posterity with unsullied honor![172]

Henry was particularly interested in securing freedom for Baptists and Presbyterians. He was brought up in the Episcopal Church, but his mother had come from a Presbyterian home, and Henry frequently attended Presbyterian services, being much drawn to the preaching of the Reverend Samuel Davies,[173] whose views on religious liberty undoubtedly influenced him, as he attended Davies' church from his eleventh to his twenty-second year.[174] In several cases Henry paid the fines of ministers imprisoned for conscience' sake and defended them in the courts. It was he who, petitioned by the Baptists, secured permission from the Virginia Convention in August, 1775, to permit their ministers and those of other dissenting groups to preach to the troops.[175] He had about him no element of denominational narrowness, and was clear in his opposition to a State–Church. On the other hand he differed from many of the liberal men of his time in favoring the proposed general assessment "for the support of the Christian religion" in Virginia which Madison and Mason fortunately prevented in 1785. This seems to have been his one serious lapse as an advocate of religious freedom, but it should be remembered that the proposal did not discriminate among Christian groups and that Washington's letter regarding the proposal, indicating that in theory he had no strong objection to it, shows it was contemplated that, if it passed, Jews and other non-Christians would be allowed to obtain "proper relief."[176]

Henry's biographer claims that he was the author of the clause in the Virginia Bill of Rights regarding religious freedom. He quotes Randolph's statement that

The fifteenth, recommending an adherence and frequent recurrence to fundamental principles, and the sixteenth, unfettering the exercise of religion, were proposed by Mr. Henry. The latter, coming from a gentleman who was supposed to be a dissenter,

caused an appeal to him, whether it was designed as a prelude to an attack on the established church, and he disclaimed such an object.[177]

The evidence seems to indicate that Randolph made too great claims in this matter, as George Mason[178] prepared the draft of the sixteenth section. But it is clear from his associating it with Henry and from other evidence that the great apostle of civil liberty favored Mason's proposal.

Patrick Henry was specially interested in securing an addition to the proposed Federal Constitution of a Bill of Rights guaranteeing civil and religious freedom. Speaking in the Virginia convention in opposition to approval of the proposed Federal Constitution, on June 12, 1788, he said in part:

Wherefore is religious liberty not secured? One honorable gentleman, who favors adoption, said that he had had his fears on the subject. If I can well recollect, he informed us that he was perfectly satisfied, by the powers of reasoning, (with which he is so happily endowed,) that those fears were not well grounded. There is many a religious man who knows nothing of argumentative reasoning; there are many of our most worthy citizens who cannot go through all the labyrinths of syllogistic, argumentative deductions, when they think that the rights of conscience are invaded. This sacred right ought not to depend on constructive, logical reasoning.

. . . That sacred and lovely thing, religion, ought not to rest on the ingenuity of logical deduction. Holy religion, sir, will be prostituted to the lowest purposes of human policy. What has been more productive of mischief among mankind than religious disputes? Then here, sir, is a foundation for such disputes, when it requires learning and logical deduction to perceive that religious liberty is secure. . . .[179]

It is clear from the reply of Madison, who was equally strong for religious freedom but who thought it best to have the Constitution ratified without any conditions or further formal guarantees, that it was Henry who effectively introduced into the convention the religious question.[180]

In another address, on June 24 of the same year, Henry said:

. . . I say, I conceive it my duty, if this government is adopted before it is amended, to go home. I shall act as I think my duty requires. Every other gentleman will do the same. Previous amendments, in my opinion, are necessary to procure peace and tranquillity. I fear, if they be not agreed to, every movement and operation of government will cease; and how long that baneful thing, civil discord, will stay from this country, God only knows. . . . If you will, in the language of freemen, stipulate that there are rights which no man under heaven can take from you, you shall have me going along with you; not otherwise.

[Here Mr. Henry informed the committee that he had a resolution prepared, to refer a declaration of rights, with certain amendments to the most exceptionable parts of the Constitution, to the other states in the confederacy, for their consideration, previous to its ratification. The clerk then read the resolution, the declaration of rights, and

amendments, which were nearly the same as those ultimately proposed by the Convention. . . .]

Mr. Henry then resumed the subject. I have thus candidly submitted to you, Mr. Chairman, and this committee, what occurred to me as proper amendments to the Constitution, and a declaration of rights containing those fundamental, unalienable privileges, which I conceive to be essential to liberty and happiness. I believe that, on a review of these amendments, it will still be found that the arm of power will be sufficiently strong for national purposes, when these restrictions shall be a part of the government. I believe no gentleman who opposes me in sentiments will be able to discover that any one feature of a strong government is altered; and at the same time your unalienable rights are secured by them. . . .[181]

There follows in the report of the debate the well-known twentieth section guaranteeing religious freedom adopted by the convention June 27, 1788.[182]

Henry's religious convictions were retained to the end, as the well-known statement of his Christian faith in his will indicates.

(7) SAMUEL LIVERMORE, 1732–1803, EPISCOPALIAN

Probably no other name included in this list of those who have contributed to the cause of religious freedom is so little known to the public as that of Livermore. The major biographical tribute that has been published, namely a memorial address delivered in 1888 by Charles Corning,[183] a scholarly member of the New Hampshire bar, makes no reference to the subject of religious freedom, nor is it referred to in the otherwise admirable sketch in the *Dictionary of American Biography*. And yet, as Judge Livermore provided the original proposal which was made the basis of Congressional debate on religious freedom guarantees and referred to in the records of Congress as "Livermore's motion," along with the basic ideas and some of the wording embodied in the first amendment of the Federal Bill of Rights, and as he contributed to the cause of religious freedom in other ways, it seems right to include him.

He was born in Waltham, Massachusetts, in 1732, of respectable but not distinguished family. He graduated from Princeton in 1752. He carried with him to college a letter of introduction and strong commendation from the Reverend William McClenachen, the Congregational minister of Chelsea, Massachusetts. This letter refers to the young student as one who has been "our schoolmaster about 18 months to y^{e} great satisfaction of this town. He has been a constant communicant with us at y^{e} L^{ds} Table, and has conducted himself in such a manner as to obtain the highest esteem of all his acquaintance." He adds that "He intends for y^{e} sacred w^{k} of y^{e} Gospel ministry. . . ."[184] Evidently he was considered a very promising young man.

Returning to New England, Livermore taught school, read law, married the

daughter of an Episcopal clergyman, and lived in turn in Portsmouth, New Hampshire, Londonderry (now Derry), and Holderness. He held many public positions, including representative in the assembly, judge of the admiralty court, and attorney general of the state. When he moved to Holderness it was a very small community, away from the main currents of thought and action. Here he acquired most of the township, built a fine house, used by the Holderness School from 1878 until its loss by fire in 1882. Here he dispensed large hospitality, and conducted successfully his farm and mill. He developed much interest, through his wife, in the Episcopal Church. He had served as warden of Queen's Chapel at Portsmouth, and it became his custom at Holderness to read prayers and preach sermons in his home every Sunday for those interested. He afterward built the Episcopal church there, and entertained for over a decade the visiting clergymen. His association with both Congregational and Episcopal churches, and his study at a Presbyterian college, may have been factors in developing his interest in religious toleration. His breadth of view is also shown by his advocacy of establishing a theater in Portsmouth, an attitude indicating marked liberality for those days.

He first came to national attention as a delegate to Congress in 1781, empowered to act for New Hampshire in the matter of the boundary dispute with Vermont. He also became chief justice of the state in 1784, though he had little legal learning or knowledge of the details of law or of legal procedure. He again represented New Hampshire in Congress in 1785, 1789, and 1791.

An assembly or convention was held in Exeter, New Hampshire, February 13, 1788, to decide whether the state would ratify the proposed Federal Constitution. As eight states had already voted in its favor and one more was needed, the session was a crucial one. Livermore was chairman of the only two committees appointed at the first session, which after ten days was adjourned to meet again in Concord in June, so as to enable its members to confer with their constituents. At the Concord session he served as chairman of the committee on amendments, proposing a dozen. His motion prevailed to the effect "That in case the Constitution be adopted, that the amendments reported by the committee be recommended to Congress."[185] Of these the eleventh was the highly important one: That "Congress shall make no laws touching religion or to infringe the rights of Conscience."[186] After the reading of the report by Judge Livermore and its consideration by the convention we are told that it "was received and accepted."[187] This means that Judge Livermore, who seems to have been the most influential man both in the committee on amendments and in the assembly itself, was mainly responsible for putting his state squarely on record in favor of religious freedom. He brought in his report on June 20, the same day that the committee had been appointed "to consider of and report

such amendments as they should judge necessary to be proposed in alteration of the Constitution."[188] Evidently he had in mind pretty clearly what he hoped the committee would recommend.

Unfortunately, the records of the convention are extremely meager, so we know nothing about the debate, the only other reference to our subject in the minutes being to the effect that on February 20, that is, a week after the original meeting of the convention, there was "some debate respecting a Religious test."[189]

After the amendments had been adopted the question arose of the approval or disapproval of the Constitution as a whole. Again Judge Livermore made the motion on the main question, namely, the adoption of the Constitution. At a crucial moment when the result was in the balance his own vote was called for. He voted "yes," and his decision was known to have carried great weight with some of the wavering voters who were to follow.[190] The vote was 57 in favor to 46 against.

This convention, meeting in the Congregational church in Concord in the spring of 1788, both by adopting the Constitution with its provision against religious tests for Federal office—which was criticized a good deal in Congregational New England—and by placing itself squarely in favor of further religious guarantees, was an event of importance, and Livermore was its hero.

Although his biographer does not refer in any way to the religious-freedom issue, evidently he appreciates to the full his subject's contributions to our system of government by his action at this time.

> To Samuel Livermore [he says] the fullest meed of honor must be awarded, for it was through his ability and genius that the ninth state was ours. The meagre records and traditions of the time prove him to have been a man of surpassing intellect, and the student of history is warranted in placing him with Madison and Washington as one of the fathers of the constitution.[191]

Judge Livermore's most important contribution was, however, to come later. He was a member of Congress when it proposed various amendments to the Constitution and, undoubtedly with the action of the state of New Hampshire in mind committing itself to the cause of religious freedom, he made an effective fight for this principle. The records speak for themselves. They are given at some length elsewhere, when the whole debate is recorded.[192] Here it is sufficient to state that when religious-freedom guarantees were under discussion, a matter in which James Madison[193] had long been specially interested, the latter proposed that the amendment might read "no national religion shall be established by law, nor shall the rights of conscience be infringed." This bears

some resemblance to a proposal by Charles Pinckney at the Constitutional Convention of 1787.[194]

Then follow in the journal these two significant entries: "Mr. Livermore was not satisfied with that amendment; but he did not wish them to dwell long on the subject. He thought it would be better if it was altered, and made to read in this manner, that Congress shall make no laws touching religion, or infringing the rights of conscience." This, it will be noticed, is in its first half a more inclusive prohibition than that proposed by Madison, and it had its important influence on the ultimate wording of the First Amendment. Livermore wished not only to prevent a national Church but also the adoption of any federal laws touching religion. Some remarks by Mr. Gerry followed, criticizing Mr. Madison's proposal, principally because he considered the government a federal rather than a national one. Then comes this epoch-making entry: "Mr. Madison withdrew his motion, but observed that the words 'no national religion shall be established by law,' did not imply that the government was a national one; the question was then taken on Livermore's motion, and passed in the affirmative, thirty-one for, and twenty against it."[195] And so the general form which the religious-freedom guarantee later took in our Federal Bill of Rights was largely due to Samuel Livermore.

Madison by his "Remonstrance" to the Virginia legislature in 1763, and Jefferson by his "Bill for Establishing Religious Freedom" in Virginia, 1785–86, were the spiritual fathers of the First Amendment guaranteeing religious freedom, and Madison was responsible for bringing the matter effectively before the first session of Congress. Many minds played their part in the congressional and committee discussions which led to the final result, but it was Livermore's proposal which, according to the official records, formed the actual basis of the final action.

His other contributions through Congress were mainly in the fields of finance and taxation; but he made at least one speech of a broader character, containing a sentence which deserves quoting: "Liberty," he said, "was that which arose from law and justice, and which secured every man in his individual and social rights."[196] He also supported the independence of members against the theory of "instructions."[197]

There were other places where Livermore made important contributions to the public welfare. He was president of the New Hampshire constitutional convention of 1791–92, being elected president apparently without opposition. This convention adopted a bill of rights which protected "rights of conscience" in almost exactly the same form that these were provided for in the Constitution of 1784. He also rendered further service to the State as a member of Congress and

of the United States Senate, where he acted as president pro tempore. There is nothing in the record to show that he was much of a student of history, or of law, or of the theory of government. Nor was the cause of religious freedom a matter of long and intense study and interest with him as it was with Jefferson and Madison and Mason; but he was a man of broad sympathies, of practical knowledge of the needs of the nation, of great good sense, and of an able mind, who in various ways, but especially through suggesting the substance of the wording of the first clause of the Bill of Rights, rendered the cause conspicuous service.

(8) THOMAS PAINE, 1737–1809, DEIST

We think of Thomas Paine primarily as an ardent advocate of independence (*Common Sense,* 1776), of *The Rights of Man* (1791–92), and of the need of allowing reason to overcome superstition in religion, the *Age of Reason* (1792–96). He vigorously attacked what he believed to be the errors in the Bible and in commonly accepted forms of Christianity, and advocated Deism. He favored liberty and opposed all forms of religious oppression, but his contribution to the cause of religious freedom as distinct from civil freedom was indirect rather than direct. It came mainly from his passionate desire to set men free from the inherited tyrannies of orthodox views of political absolutism and ecclesiastical religion. As a result the established churches were weakened and independence of thought encouraged.

Paine, especially in his later years, said and did many indiscreet and unwise things, but posterity has thought relatively too much of these and has unjustly accused him of atheism. He was of Quaker stock and a believer in a Divine Being, although out of sympathy with the idea of revealed religion. A few quotations will show his interest in religious freedom and his opposition to the union of Church and State. Perhaps the clearest expression of his views is given in his *Epistle to Quakers.* He did not like certain criticisms which Quakers had published in a statement entitled *The Ancient Testimony and Principles of the people called Quakers renewed, with respect to the King and Government, and touching the Commotions now prevailing in these and other parts of America, addressed to the People in General.* This appeared in 1776. Opening his "Epistle," Paine disclaims any opposition to religion, as such, but states his strong disapproval of any attempt by any Church to mix up in matters political. He says:

> The writer of this is one of those few who never dishonors religion, either by ridiculing or caviling at any denomination whatsoever. To God, and not to man, are all men accountable on the score of religion. Wherefore, this epistle is not so properly addressed

to you as a religious, but as a political body, dabbling in matters which the professed quietude of your principles instructs you not to meddle with.[198]

He closes by giving his reasons for criticising the attitude shown by the Quakers in their published statement:

First. Because it tends to the decrease and reproach of all religion whatever, and is of the utmost danger to society, to make it a party in political disputes.

Secondly. Because it exhibits a body of men, numbers of whom disavow the publishing of political testimonies, as being concerned therein and approvers thereof.

Thirdly. Because it hath a tendency to undo that continental harmony and friendship which yourselves, by your late liberal and charitable donations, have lent a hand to establish; and the preservation of which is of the utmost consequence to us all.

And here, without anger or resentment, I bid you farewell. Sincerely wishing, that as men and Christians, ye may always fully and uninterruptedly enjoy every civil and religious right; and be in your turn the means of securing it to others; but that the example which ye have unwisely set of minging religion with politics, *may be disavowed and reprobated by every inhabitant of* AMERICA.[199]

In *Common Sense,* published the same year, with an introduction by Benjamin Franklin, Paine wrote in part:

As to religion, I hold it to be the indispensable duty of government to protect all conscientious professors thereof, and I know of no other business which government hath to do therewith. Let a man throw aside that narrowness of soul, that selfishness of principle, which the niggards of all professions are so unwilling to part with, and he will be at once delivered of his fears on that head. Suspicion is the companion of mean souls, and the bane of all good society. For myself, I fully and conscientiously believe, that it is the will of the Almighty that there should be a diversity of religious opinions among us. It affords a larger field for our Christian kindness; were we all of one way of thinking, our religious dispositions would want matter for probation; and on this liberal principle I look on the various denominations among us, to be like children of the same family, differing only in what is called their Christian names. . . .[200]

In view of the enormous influence of this book, which, as Washington said, "worked a powerful change in the minds of many men," these brave words were of significance in advancing the cause of religious freedom.

In this work Paine's purpose was to oppose what we have come to call "appeasement" with Great Britain, to advocate independence, and to urge people to seize their opportunity, as "the birthday" of a new world was at hand. *Religious* freedom was a part, but only a small part, of this dream. The thirteen *Crisis* papers which followed during the Revolution emphasized the same major thoughts as *Common Sense.* It was because of these patriotic publications that

Paine received in 1785 the thanks of Congress for "explaining and enforcing the principles of the late revolution by ingenious and timely publications upon the nature of liberty, and civil government. . . ."[201]

It was as a patriotic pamphleteer that he was most effective, but he gave practical evidence of his sincerity by serving on important public committees to advance the war, and by acting as a volunteer aide-de-camp to General Greene.

In the *Rights of Man,* published in London in 1791, largely as an answer to Burke's critical *Reflections on the French Revolution,* he wrote:

The French Constitution hath abolished or renounced *Toleration* and *Intolerance* also, and hath established UNIVERSAL RIGHT OF CONSCIENCE.

Toleration is not the *opposite* of Intolerance, but is the *counterfeit* of it. Both are despotisms. The one assumes to itself the right of withholding Liberty of Conscience, and the other of granting it. The one is the Pope armed with fire and faggot, and the other is the Pope selling or granting indulgences. The former is church and state, and the latter is church and traffic.

But Toleration may be viewed in a much stronger light. Man worships not himself, but his Maker; and the liberty of conscience which he claims is not for the service of himself, but of his God. In this case, therefore, we must necessarily have the associated idea of two things; the *mortal* who renders the worship, and the IMMORTAL BEING who is worshipped. Toleration, therefore, places itself, not between man and man, nor between church and church, nor between one denomination of religion and another, but between God and man; between the being who worships, and the BEING who is worshipped; and by the same act of assumed authority which it tolerates man to pay his worship, it presumptuously and blasphemously sets itself up to tolerate the Almighty to receive it. . . .

With respect to what are called denominations of religion, if every one is left to judge of its own religion, there is no such thing as a religion that is wrong; but if they are to judge of each other's religion, there is no such thing as a religion that is right; and therefore all the world is right, or all the world is wrong. But with respect to religion itself, without regard to names, and as directing itself from the universal family of mankind to the Divine object of all adoration, *it is man bringing to his Maker the fruits of his heart;* and though those fruits may differ from each other like the fruits of the earth, the grateful tribute of every one is accepted. . . .

One of the continual choruses of Mr. Burke's book is "Church and State." He does not mean some one particular church, or some one particular state, but any church and state; and he uses the term as a general figure to hold forth the political doctrine of always uniting the church with the state in every country, and he censures the National Assembly for not having done this in France. Let us bestow a few thoughts on this subject.

All religions are in their nature kind and benign, and united with principles of morality. They could not have made proselytes at first by professing anything that was

vicious, cruel, persecuting, or immoral. Like everything else, they had their beginning; and they proceeded by persuasion, exhortation, and example. How then is it that they lose their native mildness and become morose and intolerant?

It proceeds from the connection which Mr. Burke recommends. By engendering the church with the state, a sort of mule-animal, capable only of destroying, and not of breeding up, is produced, called *the Church established by Law.* It is a stranger, even from its birth, to any parent mother, on whom it is begotten, and whom in time it kicks out and destroys.

The inquisition in Spain does not proceed from the religion originally professed, but from this mule-animal, engendered between the church and the state. The burnings in Smithfield proceeded from the same heterogeneous production; and it was the regeneration of this strange animal in England afterwards, that renewed rancour and irreligion among the inhabitants, and that drove the people called Quakers and Dissenters to America. Persecution is not an original feature in any *religion;* but it is always the strongly-marked feature of all law-religions, or religions established by law. Take away the law-establishment, and every religion re-assumes its original benignity. In America, a catholic priest is a good citizen, a good character, and a good neighbour; an episcopalian minister is of the same description: and this proceeds independently of the men, from there being no law-establishment in America.

If also we view this matter in a temporal sense, we shall see the ill-effects it has had on the prosperity of nations. The union of church and state has impoverished Spain. The revoking the edict of Nantes drove the silk manufacture from that country into England; and church and state are now driving the cotton manufacture from England to America and France. Let then Mr. Burke continue to preach his antipolitical doctrine of Church and State. It will do some good. The National Assembly will not follow his advice, but will benefit by his folly. It was by observing the ill effects of it in England, that America has been warned against it; and it is by experiencing them in France, that the National Assembly have abolished it, and, like America, have established UNIVERSAL RIGHT OF CONSCIENCE, AND UNIVERSAL RIGHT OF CITIZENSHIP.[202]

In addition to these specific appeals for religious freedom, his writings contain many strong statements upholding the right of private judgment in all matters.

For instance, in *The Age of Reason,* completed in France in 1793, he said:

You will do me the justice to remember, that I have always strenuously supported the right of every man to his opinion, however different that opinion may be to mine. He who denies to another this right, makes a slave of himself to his present opinion, because he precludes himself the right of changing it. The most formidable weapon against errors of every kind is reason. I have never used any other, and I trust I never shall.[203]

In the same work Paine shows clearly that he was not an opponent of religion as such, but merely of what he considered superstitious beliefs and dogmatic intolerance. He sums up his convictions about religion in three statements:

> First—That the idea or belief of a word of God existing in print, or in writing, or in speech, is inconsistent in itself for reasons already assigned. . . .
>
> Secondly—That the Creation we behold is the real and ever existing word of God, in which we cannot be deceived. It proclaims his power, it demonstrates his wisdom, it manifests his goodness and beneficence.
>
> Thirdly—That the moral duty of man consists in imitating the moral goodness and beneficence of God manifested in the creation towards all his creatures. That seeing as we daily do the goodness of God to all men, it is an example calling upon all men to practise the same towards each other; and, consequently, that every thing of persecution and revenge between man and man, and everything of cruelty to animals, is a violation of moral duty.[204]

In another place he gives a clear statement of his religious and ethical position. He says:

> I believe in one God and no more; and I hope for happiness beyond this life.
>
> I believe in the equality of man; and I believe that religious duties consist in doing justice, loving mercy, and endeavoring to make our fellow-creatures happy.
>
> The world is my country, to do good my religion.[205]

In further defining what he believes to be a rational creed, he says:

> It is certain that, in one point, all nations of the earth and all religions agree. All believe in a God. The things in which they disagree are the redundancies annexed to that belief; and therefore, if ever an universal religion should prevail, it will not be anything new, but in getting rid of redundancies, and believing as man believed at first. Adam, if ever there was such a man, was created a Deist; but in the meantime, let every man follow, as he has a right to do, the religion and worship he prefers.[206]

His plea was for universal, not merely Christian, religious freedom.

In 1797 he helped establish in Paris the Church of Theophilanthropy, a name clearly indicating his three major spiritual interests: God, love, and man. It was really an ethical society, although it was called a church and the room in which its adherents met was made to resemble the interior of a place of religious assembly, with an altar covered with flowers and with texts on the walls from the Bible and various philosophical works. It existed for four years, that is until Napoleon on July 15, 1801, made Roman Catholicism the official and only religion of the French people and agreed to suppress all other forms of worship.[207]

In spite of these evidences of theistic belief, and of his statements of respect for the character and teachings of Jesus, the *Age of Reason* was so radical in its

thought on matters religious that most people turned against Paine. They charged him with being an "infidel" and promoting "infidelity." Even so staunch a republican and former friend as Samuel Adams wrote him under date of November 30, 1802:

SIR,—

I have frequently with pleasure reflected on your services to *my* native and *your* adopted country. Your Common Sense, and your Crisis, unquestionably awakened the public mind, and led the people loudly to call for a declaration of our national independence. I therefore esteemed you as a warm friend to the liberty and lasting welfare of the human race. But when I heard you had turned your mind to a defence of infidelity, I felt myself much astonished and more grieved, that you had attempted a measure so injurious to the feelings and so repugnant to the true interest of so great a part of the citizens of the United States. The people of New England, if you will allow me to use a Scripture phrase, are fast returning to their first love. Will you excite among them the spirit of angry controversy at a time when they are hastening to amity and peace? I am told that some of our newspapers have announced your intention to publish an additional pamphlet upon the principles of your Age of Reason. Do you think that your pen, or the pen of any other man, can unchristianize the mass of our citizens, or have you hopes of converting a few of them to assist you in so bad a cause? We ought to think ourselves happy in the enjoyment of opinion, without the danger of persecution by civil or ecclesiastical law. Our friend, the President of the United States, has been calumniated for his liberal sentiments by men who have attributed that liberality to a latent design to promote the cause of infidelity. This, and all other slanders, have been made without the least shadow of proof. Neither religion nor liberty can long subsist in the tumult of altercation, and amidst the noise and violence of faction. *Felix qui cautus.* Adieu.[208]

After Paine's return to America in 1802 he lived largely in retirement, being ostracized in conservative circles because of his severe criticism of Washington and the Federalists and his theological radicalism. Many prominent republicans feared the identification of his infidelity with their party. They were afraid that it would alienate those groups which had inherited strong religious convictions. This ground of opposition has continued to our time. As late as 1943 the Fairmount Park Commission in Philadelphia refused permission to have a bronze statue erected to his memory in the park. Its members recognized that he was the "author-hero of the American Revolution," but "his writings indicated that he was an atheist," and they feared that his "reputed religious views might make such a statue objectionable to many Philadelphians."[209] Theodore Roosevelt's unfair description of him as a "filthy little atheist"[210] represented all too accurately the public estimate. So an old Church–State controversy was revived after a century and a half because a committee of citizens

which had commemorated a few years earlier the 200th anniversary of Paine's death had tried to provide a permanent and public memorial to his work. Here is an interesting case for students of religious freedom![211]

The general standing of Paine both as a man and a patriot has greatly improved in recent years, as evidenced by his election to the Hall of Fame in 1945. This has been due to the result of research, which has shown that most of the early charges against him for questionable conduct were due to his political enemies and were not justified by the facts. He was not a heavy drinker except at one brief period of life—his last three unhappy years. He was not a man of immoral life. He was not an atheist—indeed, one of his purposes in writing the *Age of Reason* was to combat atheism. He was not profane or obscene in conversation. He was neither a Communist nor a Jacobin. He was on the contrary a man of high personal character and ideals, and of great unselfishness, whose passionate interest was for political liberty, first and foremost in America, but also in England, France, and elsewhere. He was at times undoubtedly intemperate in his language about men, measures, creeds, and governments which he thought inimical to freedom and democracy, but his unselfish purpose cannot be questioned.

His devotion to such liberal causes as political freedom, human equality, free universal education, women's emancipation, abolition of slavery, world federation, and, although he said relatively less about it, separation of Church and State, was undoubted. Freedom, reason, humanity, were perhaps his three greatest emphases. Several recent works, such as W. E. Woodward's *Tom Paine, America's Godfather*, 1945, bring out clearly the more favorable view of Paine now held by thoughtful people. They recognize that he was in some respects an extremist and unfair, but will always feel grateful to him for doing as much as any man of his time to aid the movement resulting in the Declaration of Independence in the colonies; to point out the implications of freedom and democracy; and to rally the people of the colonies to the great struggle under Washington's leadership which led to the United States of America—a name which he himself first proposed.

(9) JOHN CARROLL, 1735–1815, ROMAN CATHOLIC

It was a matter of importance to Church-State relations in the United States that an American-born Catholic of liberal culture and broad outlook should have been the first official head of his Church in this country, and it may be said that his generous policies dominated here through the administration of Archbishop John England (1786–1842). Under Archbishop Hughes (1797–1864), partly owing to Hughes' personality, and partly owing to the very unfair attacks of certain Protestant groups against Roman Catholics, there was some-

what of a reaction, but the broad foundations laid by Archbishop Carroll have never been entirely lost. Many of the great American leaders of the Church, such as Archbishop Martin John Spalding (1810–72) and his nephew Bishop John Lancaster Spalding (1840–1916), Archbishop Ireland (1838–1918), Cardinal Gibbons (1834–1921), and the builders of the Catholic University, have been in his general tradition.

Some readers may question the inclusion of Archbishop Carroll among the "Leaders Interested in Religious Freedom." With the inherited tradition of his Church, whose members conscientiously believe that they are the only true Church of Christ, it has not always been easy for them to advocate complete religious freedom, especially in Catholic countries. Many doubted whether they could identify themselves consistently with a movement for such freedom in the United States. Although Archbishop Carroll's specific utterances on the subject are not many, it seems right and proper that he should be included, because, as the leading Catholic priest in the colonies, he was a sincere patriot believing in the Revolutionary cause; a staunch supporter of the Constitution with its religious freedom guarantees; an advocate of an American-selected hierarchy; a promoter of a Church adjusted to the needs of a democratic nation with a Protestant background by having in local affairs considerable independence of Rome, except in matters doctrinal and ecclesiastical; and a man who was so tolerant that he almost never allowed criticisms of other religious bodies to pass his lips. Furthermore, he had friendly relations with leaders of other communions; and we are not surprised to be told by a contemporary that there was universal sorrow among people of all religious bodies in Baltimore when he passed away. And well there might be, because as the first head of his Church in America he had stood for staunch Americanism without weakening his loyalty to the papacy.

He was born in Maryland of wealthy Catholic parents, distantly related through his mother to the family of Charles Carroll (1737–1832) of Carrollton, the signer. He was a brother of Daniel Carroll (1730–96), a member of the Federal Constitutional Convention. He had the best education which a candidate for the Catholic ministry could receive at that time—at Saint Omer's, a college for refugee English Catholics in Flanders, and at the Jesuit College of Liége, supplemented by broad travel in Europe, by teaching at the Jesuit College in Bruges, and by close association with Englishmen of distinction.

When the Society of Jesus, of which he had become a member, was suppressed in 1773, he returned to America, after a brief stay in England, and did mission work. He supported American independence, and was appointed by the Continental Congress in 1776, along with Benjamin Franklin and others, on the government mission[212] to secure the aid or neutrality of the French Ca-

nadians. This experience gained him the friendship of Benjamin Franklin, who wrote in his Paris diary five years later, July 1, 1781:

> The Pope's Nuncio called, and acquainted me that the Pope had, on my Recommendation, appointed Mr. John Carroll, Superior of the Catholic Clergy in America, with many of the Powers of a Bishop; and that probably he would be made a Bishop *in partibus* before the End of the Year. . . .[213]

As a Catholic priest Carroll took the leading part in the organization of his Church in this country after the Revolution. He advocated taking away the immediate control of American Church matters from London and making it independent except for its spiritual reliance on the Holy See. He was appointed prefect apostolic in 1784, being named "head of the missions in the provinces of the new Republic of the United States of North America."[214] He was a leader in the founding of Georgetown University, and at a meeting of the General Chapter of the Clergy in 1786 urged the appointment of a bishop to be chosen by the American clergy and to be accountable directly to Rome, stating that "the representatives of the Clergy of the United States are the only proper persons to chuse the same."[215] This was consented to "for this time only";[216] and in 1788 he was nominated by an assembly of twenty-six priests, all but two of whom voted for him. Carroll was consequently named by the Holy See in 1789 and was consecrated the following year in England. In 1811 he became archbishop. He is remembered with honor for taking in a broad and constructive way the leading part in organizing and administering the Church in this country; for his strong support of Washington and the Constitution of the republic; for the foundation of Georgetown College, the first Roman Catholic institution of higher learning in the United States; and for the erection in Baltimore of the first cathedral (1806–21) built after the founding of the republic. It is still standing, a monument to Carroll and to its architect, Benjamin H. Latrobe (1764–1820), a close Protestant friend of the bishop and one of the architects of the capitol in Washington.

Such is the brief outline of his life. Attention should now be called to the evidence of his support of the separation of Church and State, with its resulting religious freedom, on the basis of which he is given special recognition in these volumes.

Here are some of the statements of Carroll showing his sincere interest in religious freedom. In a letter written abroad in February, 1779, he said:

> . . . I am glad, however, to inform you that the fullest and largest system of toleration is adopted in almost all the American states; public protection and encouragement are extended alike to all denominations, and Roman Catholics are members of congress, assemblies, and hold civil and military posts, as well as others. . . .[217]

In a letter written in 1783 by Father Carroll to a friend at Rome for transmission to the pope, in which he requested that the clergy in America be allowed to choose their own superior, Carroll wrote:

> You are not ignorant that in these United States our religious system has undergone a revolution, if possible, more extraordinary than our political one. In all of them free toleration is allowed to Christians of every denomination; and particularly in the States of Pennsylvania, Delaware, Maryland, and Virginia, a communication of all civil rights, without distinction or diminution, is extended to those of our religion. This is a blessing and advantage which it is our duty to preserve and improve, with the utmost prudence, by demeaning ourselves on all occasions as subjects zealously attached to our government and avoiding to give any jealousies on account of any dependence on foreign jurisdictions more than that which is essential to our religion, an acknowledgment of the Pope's spiritual supremacy over the whole Christian world. . . .[218]

Father Carroll's reply to a letter by an ex-priest, Dr. Charles Wharton (1748–1823), who became an Episcopalian, appeared in 1784 with the title "Address to the Roman Catholics in the United States of America." We are told that it was marked by dignity and equanimity, being "free from all acerbity and harshness," and was well fitted to exercise a beneficial influence.[219] In it Carroll opposes religious controversy, and says that he would abstain even from the vindication of the Catholic Church from the attack made against it

> . . . if I could fear that it would disturb the harmony now subsisting amongst all Christians in this country, so blessed with civil and religious liberty; which, if we have the wisdom and temper to preserve, America may come to exhibit a proof to the world, that general and equal toleration, by giving a free circulation to fair argument, is the most effectual method to bring all denominations of Christians to a unity of faith.[220]

In a letter written February 17, 1785, we find his opinion that

> . . . By acquiring civil and religious rights in common with other Christians, we are become a national Catholic Clergy; Colleges are now erecting for giving general and liberal education; these Colleges are open, both to masters and scholars of every religious denomination. . . .[221]

In the letter of Father Carroll to Cardinal Antonelli accepting the appointment of the position of prefect apostolic, dated February 27, 1785, he calls attention to the plan adopted by the Episcopal Church to elect their own bishops and suggests that some such plan be allowed the American clergy by the Catholic Church, without their renouncing the divine authority of the Holy See. American tradition and public opinion make, he thinks, some concession of this character advisable, especially in view of the sixth of the Articles of Confederation drafted by the Continental Congress and ratified by all the states in 1781.

This provides that "no one who holds any office under the United States, shall be allowed to receive any gift, office or title of any kind whatsoever from any king, prince or foreign government." Carroll was of the opinion that this prohibition extended only to those appointed to public office in the republic, but added "it will perhaps be wrested by our opponents to apply also to ecclesiastical offices."[222]

Here is for our purposes the most important portion of the letter:

> . . . They have adopted a form of government for their church and desire it be called and to be *national,* in that it admitted no foreign Superior, that they may be freed from such fear for the future as many Catholics felt. The Most Eminent Cardinal may rest assured that the greatest evils would be borne by us rather than renounce the divine authority of the Holy See; that not only we priests who are here, but the Catholic people seem so firm in the faith that they will never withdraw from obedience to the Sovereign Pontiff. The Catholic body, however, think that some favor should be granted to them by the Holy Father, necessary for their permanent enjoyment of the civil rights which they now enjoy, and to avert the dangers which they fear. From what I have said, and from the framework of public affairs here, your Eminence must see how objectionable all foreign jurisdiction will be to them. The Catholics therefore desire that no pretext be given to the enemies of our religion to accuse us of depending unnecessarily on a foreign authority; and that some plan may be adopted for this country, in such a way as to retain absolutely the spiritual jurisdiction of the Holy See, and at the same time remove all ground for objecting to us, as though we held anything hostile to the national independence. . . .[223]

The document from which this is quoted is one of fundamental importance as showing the basic understanding of the American Catholics who were organizing their Church in the new country. They desired a certain measure of independence consistent with American nationality but without giving up loyal subjection to the papacy in matters spiritual and ecclesiastical.

Again, Carroll's religious tolerance and breadth of view may be seen in his correspondence with a prominent Catholic divine, the Reverend Joseph Berington (1743–1827). In a letter written in 1787 he asks his English friend to consider two fundamental problems for discussion in a book, namely, "the ascertaining of the boundaries to the spiritual jurisdiction of the Holy See," and "the use of the Latin tongue in the publick Liturgy." The mere raising of such questions a century and a half ago is evidence of his breadth and openness of view. He writes:

> I consider these two points as the greatest obstacles to Christians of other denominations to a thorough union with us, or at least to a much more general diffusion of our religion, particularly in N. America. . . . With respect to the latter point, I cannot help thinking that the alteration of the Church discipline ought not only to be solicited,

but insisted upon as essential to the service of God and benefit of mankind. Can there be anything more preposterous than an unknown tongue; and in this country either for want of books or inability to read, the great part of our congregations must be utterly ignorant of the meaning and sense of the publick office of the Church. It may have been prudent, for aught I know, to impose a compliance in this matter with the insulting and reproachful demands of the first reformers; but to continue the practice of the Latin liturgy in the present state of things must be owing either to chimerical fears of innovation or to indolence and inattention in the first pastors of the national Churches in not joining to solicit or indeed ordain this necessary alteration.[224]

That he should have chosen so liberal a man as Berington as his intimate correspondent is of itself significant, as is also Berington's reply: "Certainly were I circumstanced as you in America seem to be," he wrote,

I would shut my eyes on the 14 last centuries, and only consider what was the prerogative of the See of Rome during the Apostolic ages and the years immediately succeeding to them. All that is essential then existed; the rest is abuse and usurpation. You will persevere also, I flatter myself, in the warm wishes you express of having the public service in the language of the people. That is a point of discipline which any national Church, I conceive, may modify at will. . . .[225]

Carroll again returns to the matter of the use of English in the liturgy in a letter to a priest who had criticized his liberal views.

. . . In a letter to him [Berington] and before I had a thought of ever being in my present station, I expressed a wish that the pastors of the Church would see cause to grant to this extensive continent jointly with England and Ireland, etc., the same privilege as is enjoyed by many churches of infinitely less extent; that of having their liturgy in their own language; for I do indeed conceive that one of the most popular prejudices against us is that our public prayers are unintelligible to our hearers. Many of the poor people, and the negroes generally, not being able to read, have no technical help to confine their attention. . . .[226]

This point of view was to receive some additional sanction in 1791 when Bishop Carroll's diocesan synod—doubtless under his leadership—decreed that hymns and prayers in the vernacular were to be encouraged at evening services, an action which was approved by the First Provincial Council of Baltimore, meeting in 1829.[227] It is a significant step forward as a precedent for similar and more important steps now being discussed.[228]

His correspondence is full of similar generous sentiments which show his desire to adjust himself and the Church as far as possible to the new conditions in this country while retaining his loyalty to the Holy See and to the Catholic tradition of faith.

Again in a letter in the *Columbian Magazine* as a supplement in December, 1787, replying to an article criticizing the Catholic faith, Carroll wrote:

... Thanks to genuine spirit and Christianity, the United States have banished intolerance from their system of government, and many of them have done the justice to every denomination of Christians, which ought to be done to them in all, of placing them on the same footing of citizenship, and conferring an equal right of participation in national privileges. Freedom and independence, acquired by the united efforts, and cemented with the mingled blood of Protestant and Catholic fellow-citizens, should be equally enjoyed by all....[229]

Two years later he wrote under the name of "Pacificus" in answer to a communication on "The Importance of the Protestant Religion politically considered," published in the *Gazette of the United States*. Carroll, who resented the implication that this was virtually a Protestant country founded by Protestants, said in a letter to the editor that the blood of Catholics

flowed as freely (in proportion to their numbers) to cement the fabric of independence as that of any of their fellow-citizens: They concurred with perhaps greater unanimity than any other body of men, in recommending and promoting that government, from whose influence America anticipates all the blessings of justice, peace, plenty, good order and civil and religious liberty....

... That the establishment of the American empire was not the work of this or that religion, but arose from a generous exertion of all her citizens to redress their wrongs, to assert their rights, and lay its foundations on the soundest principles of justice and equal liberty....

When men comprehend not, or refuse to admit the luminous principles on which the rights of conscience and liberty of religion depend, they are industrious to find out pretences for intolerance. If they cannot discover them in the actions, they strain to cull them out of the tenets of the religion which they wish to exclude from a free participation of equal rights. Thus this author attributes to his religion the merit of being *the most favorable to freedom*, and affirms that not only *morality* but *liberty* likewise must expire, if his clergy should ever be *condemned* or *neglected:* all which conveys a refined insinuation, that liberty cannot consist with, or be cherished by any other religious institution; and which therefore he would give us to understand, it is not safe to countenance in a free government.

I am anxious to guard against the impression intended by such insinuations; not merely for the sake of any one profession, but from an earnest regard to preserve inviolate for ever, in our new empire, the great principle of religious freedom. The constitutions of some of the States continue still to intrench on the sacred rights of conscience; and men who have bled, and opened their purses as freely in the cause of liberty and independence, as any other citizens, are most unjustly excluded from the advantages which they contributed to establish. But if bigotry and narrow prejudices

have prevented hitherto the cure of these evils, be it the duty of every lover of peace and justice to extend them no further. . . .[230]

A few months later, in December, 1789, the Catholics under his lead sent an address of welcome and appreciation to the president-elect, George Washington. In it they said:

. . . You encourage respect for religion; and inculcate, by words and actions, that principle, on which the welfare of nations so much depends, that a superintending providence governs the events of the works, and watches over the conduct of men. . . .[231]

Carroll's consecration as the first American bishop of the Roman Catholic Church was the occasion of an act highly significant of his tolerance. He was chosen to this office in 1789 but not consecrated until the following year. The delay was due partly to the confused conditions of the time, partly to the difficulties of communication, and partly to Carroll's desire to have the objectionable medieval phrase *exterminare haereticos* omitted from the enumeration of the bishop's duties in his oath of consecration. That he succeeded in accomplishing this was highly important for the whole future of the Church in America, for, although the clause originally seems to have meant merely to drive heretics out of the borders of the bishop's jurisdiction, it was none the less objectionable in itself and sure to be misunderstood and to prejudice the Catholic cause among Americans.[232]

At the close of the bishop's first sermon after his consecration, delivered in Baltimore in December, 1790, referring to the Catholics under his care, he said that he wished

. . . to preserve in their hearts a warm charity and forbearance toward every other denomination of Christians, and at the same time to preserve them from that fatal and prevailing indifference which views all religions as equally acceptable to God and salutary to men. . . .[233]

This was particularly significant in view of the occasion. It was a definite attempt to develop the spirit of tolerance in relations with Protestants.

In 1791 the first diocesan synod of the Church in the United States was held in Baltimore. It was also the first national synod, for Carroll's diocese now extended to the Mississippi! At this he read his well-known "Prayer for the Civil Authorities of our Country." It breathes a spirit of patriotism, of devotion to religion, and of broad sympathy. One of the petitions (the fifth) is particularly worthy of note because of its inclusiveness:

We recommend likewise, to Thy unbounded mercy, all our brethren and fellow-

citizens throughout the United States, that they may be blessed in the knowledge and sanctified in the observance of Thy most holy law; that they may be preserved in union, and in that peace which the world can not give; and after enjoying the blessings of this life, be admitted to those which are eternal.[234]

On December 29, 1799, Bishop Carroll issued a pastoral recommending that Washington's Birthday, February 22, 1800, be observed "with a reverence expressive of their veneration for the deceased Father of his Country, and founder of its Independence. . . ."[235] It was in connection with the service which ensued at St. Peter's Pro-Cathedral that Archbishop Carroll himself delivered a memorial address which is the best known of his utterances. It referred to the "sublime, magnanimous Washington," and closed with these words:

. . . May those United States flourish in pure and undefiled religion, in morality, peace, union, liberty and the enjoyment of their excellent Constitution, as long as respect, honour, and veneration shall gather round the name of Washington; that is, whilst there shall be any surviving record of human events.[236]

Another evidence of his breadth of view was the fact that he wrote in 1808 that he had read four times *An Essay on the Spirit of Controversy*[237] by Reverend John Fletcher, which he praised for its "elegance and solid acute reasoning." He had an edition printed in America which he thought had "a great effect on Catholics and Protestants."[238] It is quite clear that his ideas of religious freedom led him to dislike anything in the nature of religious discussion unless carried on in the most courteous and friendly spirit.

Monsignor Guilday, the leading authority on the life of John Carroll, and himself a fair-minded and distinguished historian, speaks of reading his letters on the English Catholic situation in the second decade of the last century. "Running through all the letters," he says, "there is a quiet satisfaction which he can hardly repress at times, over the peaceful relations between the State and the Catholic Church in this country. . . ."[239]

His life was now drawing to a close. Two little incidents from his last year (1815) are worth mentioning. The first is the fact that the committee in charge of the arrangements for laying the cornerstone of the Washington Monument in Baltimore invited him to be the speaker—an evidence of the respect in which he was held by his fellow citizens—but owing to poor health he declined. The second has to do with his funeral. We are told by an eyewitness that "Distinctions of rank, of wealth, of religious opinion, were laid aside in the great testimony of respect to the memory of the man. . . . The liberality of his character, and his Christian charity, endeared him to his Protestant brethren, with whom he dealt in brotherly love."[240]

A study of Archbishop Carroll's life and influence leads to the conclusion

that as far as tolerance is concerned probably the most important factor is Christian courtesy, thoughtful consideration for others. It was because Carroll was a Christian gentleman in the highest sense of the word that he assumed such a generous outlook toward those who differed from him; but, as we have frequently tried to show in these volumes, toleration is not enough. We must have entire religious freedom from a governmental standpoint. This apparently the archbishop also stood for, in view of his support of the religious freedom provisions of the Constitution, though there is no evidence that he personally took any large part in bringing about these guarantees. But his brother, Daniel Carroll (1730–96), was a delegate to the Federal Constitutional Convention and to the first Congress under the republic. In the latter, when the question of recommending a bill of rights to the states was under consideration, in 1789, he spoke earnestly in behalf of the proposed religious-freedom amendment.[241] It is probable that he reflected his brother's views, as he would scarcely as a devout Catholic have taken this stand without consulting one who was both the official head of the Church in this country and one bound to him by the closest of family ties and deep affection.

One may gauge the significance of John Carroll's work for religious freedom by the spirit which animated his life as a churchman and as a patriot, by his consistent support of our Constitution and of its religious-freedom guarantees, and by the disastrous results which might well have followed, both for the Church and the nation, had a man of less generous views laid the foundations of his communion in the new nation. During the celebration marking the close of the Catholic hierarchy's first century in the United States, in 1889, Cardinal Gibbons truly said:

> . . . Archbishop Carroll was thoroughly conversant with the genius of our political constitution and with the spirit of our laws and system of government. He was therefore admirably fitted for the delicate task of adjusting the discipline of the Church to the requirements of our civil constitution.[242]

(10) THOMAS JEFFERSON, 1743–1826, NOMINAL EPISCOPALIAN, UNITARIAN IN BELIEF

The author of the "Bill for Establishing Religious Freedom"[243] in Virginia is another whom we should specially honor for his service to the cause of religious freedom and Church–State separation. Indeed, Roger Williams[244] is the only person in our history who can dispute his claim to primacy in this field of influence. A book might be written on the sources of his views on religious liberty. They would include, in addition to his own independent thinking on the actual needs of the American situation, many factors such as the study of European political history and theory from the days of Greece on, the Bible, John Locke, the French philosophers, and the Presbyterians and Baptists of Virginia.

Jefferson's bill to incorporate in legislation the religious freedom guaranteed by the Virginia Convention of 1776, was originally prepared in the following year, presented to the Assembly in 1779, and passed December 17, 1785, being duly signed and declared a law a month later. The last portion of Section I and Section II read as follows:

that the opinions of men are not the object of civil government, nor under its jurisdiction; *that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty,* because he being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; *that it is enough for the rightful purposes of Civil Government for its officers to interfere when principles break out into overt acts against peace and good order;* and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

Section II. We, the General Assembly of Virginia, do enact that no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.[245]

Referring to the two sentences I have italicized, Chief Justice Waite of the United States Supreme Court said in an opinion fifty years ago that we find here "the true distinction between what properly belongs to the Church and what to the State."[246] Their effective separation in America virtually dates from this statute.

The adoption of his proposal was of epoch-making significance at home and abroad,[247] as Virginia is believed to have been the first state in the world to have provided by self-imposed statute for complete religious freedom and equality. Jefferson, who was interested in religions from the political more than from the religious standpoint, deserves full credit for this legislation, but it would not have been possible had it not been for the effective work along similar lines of James Madison (1751–1836), George Mason (1725–92), and others.

The Act is printed in full below.[248]

At the time that this and other legislation aiming at securing religious freedom and the complete separation of Church and State were under consideration, Jefferson wrote his *Notes on Virginia* (1782). In this he gives a careful

statement of his conviction that the State has no authority whatever over religious views unless and until these result in acts which endanger the commonwealth. He adds that several different churches are better than one, as a variety of religious opinions is in the interest of progress and freedom. After expressing amazement that a people who have lavished their lives and fortunes for the establishment of "civil freedom" are willing to continue in "religious slavery"—and here he has the Virginia Episcopal Church–State bond especially in mind—he says:

> The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have no authority over such natural rights, only as we have submitted to them.
>
> The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God. . . . Had not the Roman government permitted free inquiry, Christianity could never have been introduced. Had not free inquiry been indulged at the era of the reformation, the corruptions of Christianity could not have been purged away. If it be restrained now, the present corruptions will be protected, and new ones encouraged. . . . Difference of opinion is advantageous in religion. The several sects perform the office of a *censor morum* over each other. . . .[249]

Jefferson was not at the Federal Constitutional Convention, being minister to France at the time, but he heartily favored the clause adopted with the view of separating Church and State. A decade later (January 1, 1802), replying to an address from a committee of the Danbury Baptist Association, of Connecticut, he wrote:

> Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.[250]

His general conviction on the subject of religious freedom was clearly brought out in his second inaugural as president (1805). He doubtless had in mind particularly his well-known objection to presidential Thanksgiving Day proclamations:

In matters of religion, I have considered that its free exercise is placed by the constitution independent of the powers of the general government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the constitution found them, under the direction and discipline of state or church authorities acknowledged by the several religious societies.[251]

He kept up his devotion to the cause of religious freedom to the end, even in the case of obscure sects holding views with which he had no sympathy. As an example, he wrote to Albert Gallatin on June 16, 1817:

. . . Three of our papers have presented us the copy of an act of the legislature of New York, which, if it has really passed, will carry us back to the times of the darkest bigotry and barbarism, to find a parallel. Its purport is, that all those who shall *hereafter* join in communion with the religious sect of Shaking Quakers, shall be deemed civilly dead, their marriages dissolved, and all their children and property taken out of their hands. This act being published nakedly in the papers, without the usual signatures, or any history of the circumstances of its passage, I am not without a hope it may have been a mere abortive attempt. It contrasts singularly with a contemporary vote of the Pennsylvania legislature, who, on a proposition to make the belief in God a necessary qualification for office, rejected it by a great majority, although assuredly there was not a single atheist in their body. And you remember to have heard, that when the act for religious freedom was before the Virginia Assembly, a motion to insert the name of Jesus Christ before the phrase, "the author of our holy religion," which stood in the bill, was rejected, although that was the creed of a great majority of them.[252]

That he was "the author . . . of the statute of Virginia for religious freedom" was, as is well known, one of the three things of which he was most proud and that he mentioned in his own epitaph; the others being his authorship of the Declaration of Independence and the founding of the University of Virginia. Others would occupy the posts of minister to France, secretary of state, president of the United States, but he alone could be held mainly responsible for these three great achievements. He contributed to Bible societies and churches, and attended religious worship with fair regularity, frequently taking his prayer book with him and joining in the responses. He was never heard to use profanity.[253]

As far as his personal religious convictions were concerned, although unorthodox, he was both a Theist and a believer in the teachings of Jesus. Two quotations from his greatest state papers show this clearly. His second inaugural (1805) brings out his belief not only in God as conceived by the deists, but in the living God of Christian Theism.

. . . I shall need, too, the favor of that Being in whose hands we are, who led our

fathers, as Israel of old, from their native land and planted them in a country flowing with all the necessaries and comforts of life; who has covered our infancy with His providence and our riper years with His wisdom and power, and to whose goodness I ask you to join in supplications with me that He will so enlighten the minds of your servants, guide their councils, and prosper their measures that whatsoever they do shall result in your good, and shall secure to you the peace, friendship, and approbation of all nations.[254]

The other reference is from his Bill for establishing Religious Freedom in Virginia, quoted at length elsewhere.[255] Here, earlier in his career, he speaks of "The Holy Author of our religion," and calls him "Lord both of body and mind"—words that do not fit in with the general Federalist thought of his antireligious and anti-Christian views. Regarding the latter, as he wrote to Timothy Pickering praising one of Channing's sermons as an effort to return to "the simple structure of Jesus," he wanted to get away from complicated theologies and "back to the pure and simple doctrines he inculcated, [as] we shall then be truly and worthily his disciples; and my opinion is that if nothing had ever been added to what flowed purely from his lips, the whole world would at this day have been Christian."[256] His compilation entitled *The Life and Morals of Jesus of Nazareth,* which he himself referred to as "Morals of Jesus," was printed by order of Congress in 1904, during the administration of President Theodore Roosevelt. It contains an introduction by an eminent Jewish scholar, Dr. Cyrus Adler. The edition of nine thousand copies was distributed through the members of Congress.[257] The same emphasis on the importance of a return to the actual teachings of Jesus is shown by his writing in 1823: "I am a Christian, in the only sense in which he (Jesus) wished any one to be; sincerely attached to his doctrines in preference to all others; ascribing to himself every human excellence, and believing he never claimed any other."[258]

That Jefferson, in spite of his strong opposition both to an established Church and to all narrow sectarianism, had a deep respect for religion,[259] is shown by his plan for the University of Virginia. He said that "The proof of the being of a God, the Creator, Preserver, and Supreme Ruler of the Universe, the author of all the relations of morality, and the laws and obligations which these infer, will be in the province of the professor of ethics."[260] He secured works on the evidences of Christianity for the library, and in planning the buildings of the university he provided in the rotunda for a special room "for religious worship,"[261] and gave his support to a proposal to invite the four major religious denominations of the state to establish independent theological schools in the immediate neighborhood of the university, with the idea that their clerical professors would be invited from time to time to preach there.[262] This project did not materialize, but it is interesting to note that Jefferson himself acknowledged

that "the want of instruction in the various creeds of religious faith among our citizens" was a "chasm"[263] at the new institution.

Jefferson's *Works* quote a letter of his dated November 2, 1822, in which he goes into some detail about this plan.

> In our annual report to the legislature, after stating the constitutional reasons against a public establishment of any religious instruction, we suggest the expediency of encouraging the different religious sects to establish, each for itself, a professorship of its own tenets, on the confines of the University, so near as that its students may attend lectures there, and have the free use of the library, and every other accommodation we can give them: *preserving, however, their independence of us* and each other. This fills a chasm objected to in ours as a defect in an institution professing to give instruction in all useful sciences. I think the invitation will be accepted by some sects from candid intentions and by others out of jealousy and rivalship. And by bringing the sects together, we shall soften their asperities, liberalize and neutralize their prejudices, and make the general religion a religion of peace, reason, and morality.[264]

Furthermore, the board of visitors of the university in 1824, referring to this proposal, adopted a resolution indicating that if it were carried out, "the students of the University will be free, and expected to attend religious worship at the establishment of their respective sects, in the morning, and in time to meet their school in the University at its stated hour."[265] There was, however, to be no compulsion.

These facts are mentioned to show that even in establishing a quasi-state university on broad lines, the greatest liberal who took part in the founding of our government felt that instruction in the fundamentals of Christian Theism and Christian worship were both important and proper. Similarly, as an evidence of respect for religion by Jefferson and other founders of the republic, it is worth recording that L'Enfant, who planned the capital city at the request of Washington and Jefferson, provided for "a church for national purposes"[266]—a plan which was of course not feasible under government auspices.

But Jefferson did not wish the Federal government to be tied up in any official way with Christianity. His argument against considering America a Christian nation is contained in a letter dated June 5, 1824, in which he specifically denied that "Christianity is a part of the Common Law." This letter he afterward revised, and it was published.[267] Cornelison also gives the able reply of Chief Justice John M. Clayton (1796–1856) of Delaware to Jefferson's argument in a decision in that state in 1837.[268] Zollmann thinks that Jefferson misunderstood the maxim, fearing that it implied some legal enactment or ecclesiastical establishment, rather than the spontaneous expression of popular feeling. He quotes Daniel Webster's (1782–1852) closing sentence in his argument for the recognized status of Christianity: "All proclaim that Christianity,

general, tolerant Christianity, Christianity independent of sects and parties, that Christianity to which the sword and fagot are unknown, general tolerant Christianity, is the law of the land."[269] Would Jefferson have accepted that statement? We cannot say, but it is well to bear in mind that Jefferson believed that civil liberties in the last analysis were dependent on religion, on belief in God. "Can the liberties of a nation," he said, "be thought secure, when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gifts of God? . . ."[270] His emphasis in the Declaration of Independence on natural law, which recognized that man as man had inalienable rights, was based on the conviction that God was man's creator and that as a child of God he enjoyed certain capacities and privileges which human law could not take away from him. The "natural rights" of man have frequently been advocated by men who were far from orthodox, such as Thomas Jefferson and Thomas Paine, but they have almost always recognized their divine origin.

(11) JAMES MADISON, 1751–1836, EPISCOPALIAN

Madison played such an essential part in securing Church–State separation and religious freedom in the United States that his views and actions will appear often in this narrative, especially in connection with recounting the constitutional struggles in the formative days of republican government in Williamsburg, Virginia,[271] and later in Philadelphia[272] and New York.[273] But here it seems important to bring together the main facts as to his development and views as our greatest constructive legal statesman in these fields.

Madison, who had the advantage of a good family background, studied for five years under a remarkable Scotch university graduate and good classical scholar, Donald Robertson, whose library contained significant books for one who was to become a great Constitutional statesman, such as Justinian's *Institutes,* Montesquieu's *Spirit of Laws* and one or more of Locke's writings.[274] He then prepared under a scholarly Princeton tutor, the Reverend Thomas Martin, for admission to advanced standing at the college. His latest and most authoritative biographer gives evidence for believing that the known opposition of Princeton under Witherspoon to all forms of religious establishment was a major factor in Madison's choice over the nearer William and Mary which was connected with the State Church.[275] Princeton's leaders were committed to the New Side in Presbyterianism and to religious freedom. Furthermore, in spite of the Presbyterian majority on its board of trustees, the college was nonsectarian and had students from all colonial sections.

As a student at Princeton, he came under the broad influence of President Witherspoon, a strong advocate of the tolerant attitude in matters ecclesiastical.[276] His studies, and his membership in the Whig society, led him to a deep

interest in political and Constitutional problems, and to the conviction that a successful republic must lay emphasis on the preservation of freedom under law even more than on equality. He carried this emphasis on liberty into the religious as well as the political sphere. His strong antifederalism made him the collaborator of Jefferson in many matters, including that of religious freedom.

As a young man he had an experience which profoundly influenced him. He stood outside the jail in Orange, Virginia, and heard an imprisoned Baptist minister preach from the window—the only pulpit legally available to him! When twenty-three he was already a confirmed believer in religious liberty. He referred then to "That diabolical, hell-conceived principle of persecution, . . ."[277] and had been distressed by evidences he had witnessed of denominational strife in Virginia. The following year (1775) he ordered from his bookseller various works dealing with Church-State and toleration matters.[278]

He saw clearly the evils of a State Church. He opposed all forms of union by which one Church had the advantage. Writing to a friend in 1774, he says: "Union of religious sentiment begets a surprising confidence, and ecclesiastical establishments tend to great ignorance and corruption; all of which facilitates the execution of mischievous projects."[279] He favored equality and freedom of action for all religious bodies.

On April 1, 1774, he wrote to William Bradford, Jr., of Pennsylvania, later attorney general of the United States:

> Our Assembly is to meet the first of May, when it is expected something will be done in behalf of the dissenters. Petitions, I hear, are already forming among the persecuted Baptists, and I fancy it is in the thoughts of the Presbyterians also, to intercede for greater liberty in matters of religion. For my own part, I cannot help being very doubtful of their succeeding in the attempt. . . .
>
> The sentiments of our people of fortune and fashion on this subject are vastly different from what you have been used to. . . .
>
> You are happy in dwelling in a land where those inestimable privileges are fully enjoyed; and the public has long felt the good effects of this religious as well as civil liberty. Foreigners have been encouraged to settle among you. Industry and virtue have been promoted by mutual emulation and mutual inspection; commerce and the arts have flourished; and I cannot help attributing those continual exertions of genius which appear among you to the inspiration of liberty, and that love of fame and knowledge which always accompany it. Religious bondage shackles and debilitates the mind, and unfits it for every noble enterprise, every expanded prospect. How far this is the case with Virginia will more clearly appear when the ensuing trial is made. . . .[280]

Madison did not believe that "toleration" was sufficient. "The right of every man is to liberty—not toleration."[281] He wanted full religious freedom; and we

owe it to his criticism, and the resulting discussion, that the original draft of the Virginia Bill of Rights of 1776, which used the word "toleration," was so modified as to read "all men are equally entitled to the free exercise of religion, according to the dictates of conscience."[282] For insistence on this point in the Virginia Declaration Madison should be remembered with gratitude by every earnest Jew, Catholic, Protestant, and member of every other sect in the United States. According to Brant, this clause asserted "for the first time in any body of fundamental law, a natural right which had not previously been recognized as such by political bodies in the Christian world."[283] Although Jefferson was the author of the great statute of Virginia for religious freedom (1785),[284] it owed much not only to these previous efforts of Madison, but to his vigorous efforts in securing its adoption.

He was the author of the widely circulated and highly influential "Memorial and Remonstrance" of 1784 against the proposal of the House of Delegates of Virginia to provide, through assessments, for teachers of the Christian religion. In this he showed "that religion, or the duty we owe the Creator" is a matter for individual conscience and not within the official cognizance of civil government. This published statement had great influence. It is too long to be quoted in full, but it played such a highly important part in bringing about religious freedom in Virginia, and through Virginia in the nation, that the main features of the fifteen points must be given, along with the general introduction and conclusion.

To the Honorable the General Assembly of the Commonwealth of Virginia:

We, the subscribers, citizens of the said commonwealth, having taken into serious consideration a bill printed by order of the last session of General Assembly, entitled "A Bill establishing a provision for Teachers of the Christian Religion," and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free state to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said bill—

1. Because we hold it for a fundamental and undeniable truth "that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The religion, then, of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. . . .

2. Because, if religion be exempt from the authority of the society at large, still less can it be subject to that of the legislative body. . . .

3. Because it is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity in exclusion of all other religions may establish, with the same ease, any particular sect of Christians in exclusion of all other sects? that the same authority which can force a citizen to con

tribute threepence only of his property for the support of any one establishment may force him to conform to any other establishment in all cases whatsoever?

4. Because the bill violates that equality which ought to be the basis of every law, and which is more indispensable in proportion as the validity or expediency of any law is more liable to be impeached. "If all men are by nature equally free and independent," all men are to be considered as entering into society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all, are they to be considered as retaining an "*equal* title to the free exercise of religion according to the dictates of conscience." . . .

5. Because the bill implies either that the civil magistrate is a competent judge of religious truths or that he may employ religion as an engine of civil policy. The first is an arrogant pretension, falsified by the contradictory opinions of rulers in all ages and throughout the world; the second, an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the bill is not requisite for the support of the Christian religion. To say that it is a contradiction to the Christian religion itself, for every page of it disavows a dependence on the powers of this world.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less, in all places, pride and indolence in the clergy; ignorance and servility in the laity; in both, superstition, bigotry, and persecution. . . .

8. Because the establishment in question is not necessary for the support of civil government. If it be urged as necessary for the support of civil government only as it is a means of supporting religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If religion be not within the cognizance of civil government, how can its legal establishment be necessary to civil government? . . .

9. Because the proposed establishment is a departure from that generous policy which offering an asylum to the persecuted and oppressed of every nation and religion, promised a luster to our country, and an accession to the number of its citizens. . . .

10. Because it will have a like tendency to banish our citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

11. Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with religion has produced among its several sects. Torrents of blood have been spilt in the Old World in consequence of vain attempts of the secular arm to extinguish religious discord by proscribing all differences in religious opinion.

12. Because policy of the bill is adverse to the diffusion of the light of Christianity. . . . Instead of leveling, as far as possible, every obstacle to the victorious progress of truth, the bill, with an ignoble and unchristian timidity, would circumscribe it with a wall of defense against the encroachments of error.

13. Because attempts to enforce, by legal sanctions, acts obnoxious to so great a

proportion of citizens tend to enervate the laws in general, and to slacken the bands of society. . . .

14. Because a measure of such singular magniture and delicacy ought not to be imposed without the clearest evidence that it is called for by a majority of citizens; and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. . . .

15. Because, finally, "the equal right of every citizen to the free exercise of his religion, according to the dictates of conscience," is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights "which pertain to the good people of Virginia as the basis and foundation of government," it is enumerated with equal solemnity, or rather with studied emphasis.

We, the subscribers, say that the General Assembly of this commonwealth have no such authority. And in order that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may, on the one hand, turn their councils from every act which would affront his holy prerogative or violate the trust committed to them; and, on the other, guide them into every measure which may be worthy of his blessing, redound to their own praise, and establish more firmly the liberties, the prosperity, and the happiness of the commonwealth.[285]

The significance of Madison's effort in this matter has been well expressed by his most recent biographer:

> This was indeed his great contribution to the cause of religious liberty—that he looked beyond a seemingly trivial levy in aid of religious teachers, and saw its ultimate consequence in the denial of liberty and imposition of clerical control upon the State.[286]

It was not only that he advocated religious freedom, which was important, but that he opposed any form whatever of establishment, or of official link between the Church as such and the State as such. This is the more significant because his family was closely connected with the Established Episcopal Church, of which his mother was a devoted communicant. That he was a regular attendant at its services is shown by Bishop Meade in his delightful *Old Churches, Ministers and Families of Virginia.*

A letter has recently (1946) been published which gives Madison's own recollections of the attitude of the various church forces of Virginia toward the religious freedom ideas embodied in his "Remonstrance." He wrote that it "met with the approbation of the Baptists, the Presbyterians, the Quakers, and the few Roman Catholics, universally; of the Methodists in part; and even not a few of the Sect [Anglicans] formerly established by law."[287] This means that

the religious forces without a direct stake, financial or otherwise in maintaining the State Church—i.e., the Anglicans directly, and their affiliated Methodists indirectly—were the only opponents.

A summary of his speech in the House of Delegates of Virginia, October, 1784, opposing the plan of a tax "for the support of the Christian religion, or of some Christian church, denomination, or communion of Christians, or of some form of Christian worship," has been reconstructed from his notes. It shows many of the same views presented in the "Remonstrance."

> Mr. Madison contended, first, that the regulation of religion was not within the province of the civil power, and that every attempt of the kind tended necessarily to ultimate projects of compulsory uniformity; next, that religion stands in no need of artificial props, and that the history of the world proves that it had been invariably corrupted by legal establishments, which propositions he illustrated and enforced by a review of primitive Christianity, of the Reformation, and the general progress of religious liberty; that the interests of the State would be seriously injured by the proposed measure, in discouraging the immigration into it of those who set a proper value on religious freedom, as well as by furnishing new motives for the emigration of many of its present inhabitants; that the decay of public morals complained of was in no degree attributable to the want of any legal provision for the support of religion, but was the result, in general, of a long-continued state of war, of bad laws, and of a loose administration of justice; and that the true and proper remedies would be found in the return and discipline of peace, in laws cherishing virtue, in a more regular administration of justice, and in the influence of good example and of voluntary religious associations. He then showed, that, as the benefits of the proposed provision were to be limited to *Christian* societies and churches, it would devolve upon the courts of law to determine what constitutes Christianity, and thus, amid the great diversity of creeds and sects, to set up by their *fiat* a standard of orthodoxy on the one hand and of heresy on the other, which would be destructive of the rights of private conscience. He argued, finally, that the proposition dishonored Christianity by resting it upon a basis of mercenary support, and concluded with vindicating its holy character from such a reproach, contending that its true and best support was in the principle of universal and perfect liberty established by the Bill of Rights, and which was alone in consonance with its own pure and elevated precepts.[288]

It is not too much to say that this and other similar speeches by Madison, and his "Memorial and Remonstrance," were decisive factors in preventing the success of a movement growing in several of the states to have public funds given for the regular support of the churches, a project which it is now recognized by most fair-minded men would have been detrimental to the cause of religious freedom in this country.

A few later examples of his effective interest in Church-State separation and religious freedom may be given. In 1785 he was among those who opposed

the decision of a committee of Congress to recommend setting aside one section in each township in the Western territories for the support of religion. He rejoiced when he heard a report that the plan would be abandoned, writing:

> How a regulation so unjust in itself, so foreign to the authority of Congress, so hurtful to the sale of public land, and smelling so strongly of an antiquated bigotry, could have received the countenance of a committee is truly a matter of astonishment.[289]

A further example of his vision in this matter is shown by the fact that speaking in the first Congress on June 8, 1789, he proposed certain amendments to the Constitution which if adopted would have fully anticipated the results of the Fourteenth Amendment as recently interpreted by the Supreme Court.[290] He advocated:

> Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed. . . .
>
> Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:
>
> No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.[291]

Madison deserves credit for urging that religious freedom and the prevention of any Church establishment be provided for in the First Amendment, as was accomplished by the passing of a modified form of Judge Livermore's resolution.[292] This, as we shall see, was later interpreted by Madison to include considerably more Church-State separation than the statement of twofold major purpose might seem to indicate.

The exact history of the final form is clouded in uncertainty, as the report of the subcommittee to which the wording was left is not available. It is frequently stated definitely, as in volumes I and II of the most recent life of Madison, that by Brant, that he was the author, but it is understood that Mr. Brant is modifying this in his third volume so as merely to state that it is "believed" that he was the author; as will be explained fully when the history of the religious freedom clause of the Bill of Rights is discussed.[293]

Among leaders in America Roger Williams and William Penn were path makers in darker days, and Jefferson may have had more intuitive flashes of genius in dealing with the subject; but for logical and consistent development of the Constitutional ideal of religious freedom Madison still ranks in many ways as supreme among our statesmen. And this is true not only because of his direct work in behalf of religious freedom in the crucial debates in his native

state of Virginia and in those of the Federal Constitutional Convention and the first Congress, but because he was mainly responsible for certain broad features of the Constitution, such as the system of co-ordinate Federal and state powers, leaving to the states direct decision in problems involving religion, subject to certain Federal requirements and standards.

Madison's interest in preserving the separation between Church and State led, as we shall see later, to his having some misgivings regarding Federal Thanksgiving Day proclamations.[294] It also led to a very interesting debate in the House of Representatives, February 2, 1790, when the question of the Federal census was under consideration. The bill, as reported, provided for the enumeration of farmers, mechanics, and other groups, but did not include the learned professions. Theodore Sedgwick of Massachusetts (1746–1813) suggested that it should "specify every class of citizens, into which the community was divided, in order to ascertain the actual state of the society." Mr. Madison, in his reply, said:

> The gentleman from Massachusetts has asked, why the learned professions were not included? I have no objection to giving a column to the general body. I think the work would be rendered more complete by the addition, and if the decision of such a motion turned upon my voice, they shall be added. But it may nevertheless be observed, that in such a character they can never be objects of legislative attention or cognizance. As to those who are employed in teaching and inculcating the duties of religion, there may be some indelicacy in singling them out, as the General Government is proscribed from interfering, in any manner whatever, in matters respecting religion; and it may be thought to do this, in ascertaining who, and who are not ministers of the Gospel. Conceiving the extension of the plan to be useful [however], and not difficult, I hope it may meet the ready concurrence of this House.[295]

Here, as in the case of the Thanksgiving Day proclamations, he had some question as to the advisability of including reference to ministers of religion in the census because of his strong belief in the entire separation of Church and State. He was no extremist in such matters if the fundamental principles of separation were observed, and his sense of what was fitting led him to see that the arguments in favor of both actions probably outweighed those against them. The case of chaplaincies to be supported from public funds seemed to him more serious and he opposed their appointment.

His reasons were stated at some length in an essay on the subject first printed only a generation ago. It is so significant that it must be quoted from at some length. He asked the question, "Is the appointment of chaplains to the two Houses of Congress consistent with the Constitution, and with the pure principle of religious freedom?" Madison made it clear that his opposition to the chaplaincy, whether in Congress or in the Army and Navy, was not to having

services for these groups but to their being conducted as a function of government and paid for by public funds. He wrote:

In strictness, the answer on both points must be in the negative. The Constitution of the U.S. forbids everything like an establishment of a national religion. The law appointing Chaplains establishes a religious worship for the national representatives, to be performed by ministers of religion, elected by a majority of them; and these are to be paid out of the national taxes. Does not this involve the principle of a national establishment applicable to a provision for a religious worship for the constituent as well as of the Representative Body, approved by the majority and conducted by ministers of religion paid by the entire nation?

The establishment of the Chaplainship to Congress is a palpable violation of equal rights as well as of Constitutional principles. The tenets of the Chaplain elected shut the door of worship against the members whose creeds and consciences forbid a participation in that of the majority. To say nothing of other sects, this is the case with that of Roman Catholics and Quakers who have always had numbers in one or both of the Legislative branches. . . .

If Religion consist in voluntary acts of individuals, singly or voluntarily associated, and if it be proper that public functionaries, as well as their constituents, should discharge their religious duties, let them, like their constituents, do so at their own expense. How small a contribution from each member of Congress would suffice for the purpose! How just would it be in its principle! How noble in its exemplary sacrifice to the genius of the Constitution; and the divine right of conscience! Why should the expense of a religious worship for the Legislature, be paid by the public, more than that for the Executive or Judiciary branches of the Government? . . .[296]

Similarly, he opposed the incorporation by the Federal government of religious institutions, believing that such action would tend to break down the "wall of separation" between Church and State. He sent special messages to Congress vetoing proposals for incorporating the Episcopal Church in Georgetown near Washington, and also for setting apart land in Mississippi territory for a Baptist congregation.[297]

Madison expressed similar views in a letter to Edward Livingston. Writing from Montpelier, July 10, 1822, after retirement from the presidency, he said:

I observe with particular pleasure the view you have taken of the immunity of Religion from civil jurisdiction, in every case where it does not trespass on private rights or the public peace. This has always been a favorite principle with me; and it was not with my approbation that the deviation from it took place in Congress, when they appointed chaplains, to be paid from the National Treasury. It would have been a much better proof to their constituents of their pious feeling if the members had contributed for the purpose a pittance from their own pockets. As the precedent is not likely to be rescinded, the best that can now be done may be to apply to the Constitution the maxim of the law, *de minimis non curat*.[298]

He logically extended his religious-freedom views to exclude the teaching of religion in public institutions. Writing in 1823 to Edward Everett of Massachusetts, he had this to say about the position of religion in universities. He evidently had the experience of the University of Virginia in mind.

... A university with sectarian professorships becomes, of course, a sectarian monopoly; with professorships of rival sects, it would be an arena of theological gladiators. Without any such professorships, it may incur, for a time at least, the imputation of irreligious tendencies, if not designs. The last difficulty was thought more manageable than either of the others. On this view of the subject, there seems to be no alternative but between a public university without a theological professorship, and sectarian seminaries without a university.

... The difficulty of reconciling the Christian mind to the absence of a religious tuition from a university established by law, and at the common expense, is probably less with us than with you. The settled opinion here is that religion is essentially distinct from civil government, and exempt from its cognizance; that a connection between them is injurious to both; that there are causes in the human breast which insure the perpetuity of religion without the aid of the law; that rival sects, with equal rights, exercise mutual censorships in favor of good morals; that if new sects arise with absurd opinions or overheated imaginations, the proper remedies lie in time, forbearance, and example; that a legal establishment of religion without a toleration could not be thought of, and with a toleration, is no security for public quiet and harmony, but rather a source itself of discord and animosity; and, finally, that these opinions are supported by experience, which has shown that every relaxation of the alliance between law and religion, from the partial example of Holland to its consummation in Pennsylvania, Delaware, New Jersey, etc., has been found as safe in practice as it is sound in theory. . . .[299]

He believed it was best for the country to have a large number of religious sects, but it is doubtful if he ever dreamed that the process of splitting up would go as far as it has.

He was fond of quoting Voltaire's aphorism: "If one religion only were allowed in England, the Government would possibly become arbitrary; if there were two, the people would cut each other's throats; but as there are such a multitude, they all live happy and in peace." "In a free government," added Madison, "the security for civil rights must be the same as that for religious rights; it consists in the one case in the multiplicity of interests and in the other in the multiplicity of sects."[300]

His religious sympathies extended also to the Jews, who held him in high regard. After his retirement from the presidency one wrote to him from New York (May 6, 1818):

I ought not to conceal from you that it affords me sincere pleasure to have an op-

portunity of saying that to your efforts and those of your illustrious colleagues in the convention the Jews in the United States owe many of the blessings which they now enjoy, and the benefit of this liberal and just example has been felt very generally abroad and has created a sincere attachment toward this country on the part of foreign Jews.[301]

Near the end of his life, in 1832, he wrote a letter to a clergyman which summarizes his reflections on the subject of religious freedom. It is interesting for his comments on history, and especially for the statement of his reasoned conviction that the separation of Church and State in the United States had proved advantageous to both.

Waiving the rights of Conscience, not included in the surrender implied by the social State, and more or less invaded by all religious Establishments, the simple question to be decided is whether a support of the best & purest religion, the Xn religion itself ought not so far at least as pecuniary means are involved, to be provided for by the Gov^t^. rather than be left to the voluntary provisions of those who profess it. And on this question experience will be an admitted Umpire, the more adequate as the connection between Gov^tts^. & Religion have existed in such various degrees & forms, and now can be compared with examples where connection has been entirely dissolved.

In the Papal System, Government and Religion are in a manner consolidated, & that is found to be the worst of Gov^tts^.

In most of the Gov^tts^. of the old world, the legal establishment of a particular religion and without or with very little toleration of others makes a part of the Political and Civil organization and there are few of the most enlightened judges who will maintain that the system has been favorable either to Religion or to Gov^t^.

Until Holland ventured on the experiment of combining a liberal toleration with the establishment of a particular creed, it was taken for granted, that an exclusive & intolerant establishment was essential, and notwithstanding the light thrown on the subject by that experiment, the prevailing opinion in Europe, England not excepted, has been that Religion could not be preserved without the support of Gov^t^. nor Gov^t^. be supported with^t^. an established religion that there must be at least an alliance of some sort between them.

It remained for North America to bring the great & interesting subject to a fair, and finally to a decisive test.

. . . It is true that the New England States have not discontinued establishments of Religion formed under very peculiar circumstances; but they have by successive relaxations advanced towards the prevailing example; and without any evidence of disadvantage either to Religion or good Government.

And if we turn to the Southern States where there was, previous to the Declaration of independence, a legal provision for the support of Religion; and since that event a surrender of it to a spontaneous support by the people, it may be said that the difference amounts nearly to a contrast in the greater purity & industry of the Pastors and in the

greater devotion of their flocks, in the latter period than in the former. In Virginia the contrast is particularly striking, to those whose memories can make the comparison. It will not be denied that causes other than the abolition of the legal establishment of Religion are to be taken into view in account[g] for the change in the Religious character of the community. But the existing character, distinguished as it is by its religious features, and the lapse of time now more than 50 years since the legal support of Religion was withdrawn sufficiently prove that it does not need the support of Gov[t]. and it will scarcely be contended that Government has suffered by the exemption of Religion from its cognizance, or its pecuniary aid.

The apprehension of some seems to be that Religion left entirely to itself may run into extravagances injurious both to Religion and to social order; but besides the question whether the interference of Gov[t]. *in any form* w[d]. not be more likely to increase than controul the tendency, it is a safe calculation that in this as in other cases of excessive excitement, Reason will gradually regain its ascendancey. Great excitements are less apt to be permanent than to vibrate to the opposite extreme. . . .[302]

Probably Madison gave this subject more intensive thought and scholarly consideration than any of his colleagues. He not only read history to establish his position, but studied carefully the views of Locke and other philosophers. He even developed a new theory for defending the right of man as man to hold such religious views as he considered best—the theory of property rights in thought, which will be outlined later.[303]

(12) CHARLES PINCKNEY, 1757–1824, EPISCOPALIAN

Charles Pinckney is principally known as the author of the "Pinckney Plan" for a system of government for the United States. Unfortunately, the original draft has been lost, but it has been fairly fully reconstructed from the debates in the Federal Constitutional Convention of 1787. The story of these debates is recorded elsewhere in these volumes with special reference to its religious-freedom proposals.[304] Unfortunately the records are incomplete, but four things stand out clearly regarding Mr. Pinckney's activities.

(a) That he wished to secure freedom from religious tests for office and that he was the proposer of the only clause on the subject of religion finally incorporated in the original Constitution of the United States, namely, that "no religious test shall ever be required as a qualification to any office or public trust under [the authority of] the United States."[305]

(b) That he wished to satisfy the religious scruples of Quakers and some other groups, and so secured the ratification by the convention of the substitution of an alternative "affirmation" for an "oath" to support the Constitution by all members of Congress and state legislatures and by all executive and judicial officers both of the United States and of the several states.

(c) That he wished to guarantee religious freedom in the Federal Constitu-

tion by providing that "The legislature of the United States shall pass no law on the subject of religion"—a proposal which, though referred to the committee on detail, was apparently dropped, as we do not hear of it again until it appears in slightly revised form in the first amendment of the Bill of Rights of two years later.

(d) That he united with James Madison in proposing that Congress should be specifically empowered to establish a university "in which no preference or distinction should be allowed on account of religion."[306]

It would seem, then, that Charles Pinckney fully deserves a place among our American heroes of religious liberty. He showed more interest in it in the Constitutional Convention than any member other than James Madison, although ably seconded in one or more of his proposals by his distinguished second cousin, General Charles Cotesworth Pinckney, sometimes erroneously credited with Charles Pinckney's leadership in the Federal religious-freedom cause,[307] and by Gouverneur Morris of New York.

Here are the other important facts about Charles Pinckney's career. He studied law with his father, was admitted to the bar in Charleston, was a lieutenant in the Revolution, a prisoner after the capture of Charleston from 1780 to 1781, and a member of the Congress of the Confederation. He had as large a share as any one—some think the largest share—in determining the form and content of the Constitution, as at least thirty-one of its provisions were derived from or influenced by his proposals. He also labored effectively for its ratification in his own state, where in the House of Representatives he secured by a vote of 76 to 75 the calling of a convention to consider ratification or rejection of the Federal Constitution. At this convention he made a remarkable speech containing several interesting references to religious freedom. He criticized a relatively liberal European nation—evidently France—for withholding from some citizens "the equal enjoyment of their religious liberties." He added, "How many thousands of the subjects of Great Britain, at this moment labor under Civil disabilities, merely on account of their religious persuasions!"[308] He spoke of the great differences of religious convictions in the states, because of such different groups as Quakers, Roman Catholics, and "Calvinists."[309] "For a people thus situated is a government to be formed—a people who have the justest opinion of their civil and religious rights, and who have risked everything in asserting and defending them."[310]

His speech was an important factor in securing the final ratification of the Constitution by South Carolina by a vote of 149 to 73. This was accomplished May 23, 1788.

Pinckney was four times governor of South Carolina, also United States senator, and minister to Spain. He began as a Federalist, but from 1798 on,

when he won a seat in the Senate, he was a strong Republican, tending increasingly toward democratic views. He was a brilliant, broad, and public-minded man, although somewhat given to vanity. As to his personality and character it is difficult to judge, his critics being apparently largely influenced by opposition to his liberal political views. He was not so appealing a personality as his cousin General Charles Cotesworth Pinckney (1746–1825), a colleague in the Constitutional Convention, who supported him in his successful effort to prevent the imposition of religious tests for Federal office,[311] but his contribution to the cause of religious freedom was more important. Why Pinckney has received such slight recognition for his services is hard to understand. Perhaps it is partly because a full-length biography is still a desideratum. There is an important literature regarding the origin and fate of the Pinckney "Draught," but the latest and most extensive study, although calling attention to his great Constitutional contributions, lays no emphasis on this phase of the subject—indeed, refers to it only incidentally.[312] The secret character of the Convention's proceedings and the loss of some important documents are also causes.

Where Charles Pinckney secured his liberal views is not definitely known, perhaps from Thomas Jefferson, of whom he became an ardent supporter. His year of imprisonment after the capture of Charleston by the British in 1780 also gave him time to reflect on the fundamental needs of his countrymen. He studied under Dr. David Oliphant. He is also known to have had a large library of books in the field of history and Constitutional law, and to have been a student of languages, both ancient and modern. It is also probable that he had the advantage of study at the Middle Temple in London. A Charles Pinckney was admitted there in 1773, and he is identified by most writers[313] with the subject of this sketch, but he would then have been only sixteen years of age, which makes the identification questionable.

He inherited a deep interest in Constitutional and other public questions. His father, Colonel Charles Pinckney, was one of the committee of eleven which drew up the constitution of South Carolina in 1776, just as his son served the state in drafting the constitution of 1790. The latter had been elected to the Continental Congress in 1784, 1785, and 1786. There he worked effectively for amendments which would strengthen the Federal government. This was all excellent training for his great work in the Constitutional Convention. The atmosphere of Charleston and its neighborhood, which was controlling in South Carolina in the last quarter of the century, was at the time one of unusual culture and breadth. The Episcopal Church, long dominant in social and political influence, was much more tolerant and had been better led than in the neighboring colonies. A strong infiltration of French Huguenots had broadened it, and although South Carolina had been ruled by a proud aristocracy that con-

sidered itself wedded to Anglicanism, the colony had been free from the extremes of persecution and intolerance. Presbyterians, Quakers, Episcopalians, Baptists, a good many Roman Catholics, some Jews, and other religious groups lived in comparative peace.[314] A visitor to Charleston in the first decade of the eighteenth century refers to "the Constitution of this Government allowing all Parties of well-meaning Christians to enjoy a free Toleration and possess the same privileges so long as they appear to behave themselves peaceably and well."[315] Jews were also allowed at an early date.

In spite of more liberal laws on the subject of religion in Rhode Island, Pennsylvania, New Jersey, and for a few years previous in Virginia, it is doubtful whether this spirit of tolerance in daily intercourse between religious groups was more marked in them than in South Carolina when Pinckney accomplished his immortal work in getting the initial guarantee of religious freedom in the Constitution of the United States.

(13) JOHN LELAND, 1754–1841, BAPTIST

One of the most effective leaders in the cause of religious freedom during the constitutional period was the Reverend John Leland, a Congregationalist by upbringing and a Baptist by profession. His contributions to the cause were mainly divided between Massachusetts, his native state, and Virginia, where he spent much of his life. Writing in his old age (1831), he said: "If my friends think best to rear a little monument over my body, 'Here lies the body of John Leland, who laboured [dates] to promote piety, and vindicate the civil and religious rights of all men,' is the sentence which I wish to be engraved upon it."[316] Nothing could have been more appropriate, and his wish was of course followed. He was an effective preacher, conducting many evangelical tours. He stated in 1819 that in the previous thirty-five years since he began preaching he had travelled far enough to go nearly three times around the globe, and that he had preached nearly eight thousand sermons. But, as his self-chosen epitaph indicated, his most important contribution was to the cause of freedom of conscience.

After his first removal to Virginia in 1775 he frequently appeared before the Virginia Assembly as a spokesman in behalf of religious freedom. He was chairman of the general committee of the Baptists of the state, which took such an active part in the Virginia struggle against an established Church, and he prepared the strong letter addressed to President Washington on their behalf with reference to the new government.[317] He was specially concerned with disestablishing the Episcopal Church, being instrumental in the repeal of the incorporation act and in working to have the Church's glebe lands returned to the state. The Baptists played a large part in securing religious freedom

and the abolition of the State-Church in Virginia, and Leland was their most effective advocate. Later, after the Constitution of the United States had been drafted, he was greatly disappointed because it contained no clear guarantee of the freedom desired. Public opinion in the state was divided between two major groups: one led by Patrick Henry, opposing Virginia's ratification of it on the ground of its lack of a bill of rights; the other led by James Madison, who believed it best to get the Federal government under way by ratifying the Constitution as it stood, and then to secure an amendment containing a satisfactory bill of rights. Leland was the candidate of the former group from his county for the convention called to ratify the Constitution; Madison the candidate of the other group. During the controversy preceding the state convention they agreed to meet in debate. The arguments based on the expediency of ratifying the Constitution as drafted were so cogent that, after hearing them and securing Madison's pledge that if it were ratified he would work earnestly for an amendment containing the desired guarantee of religious freedom and of other rights, Leland withdrew as a candidate. This meant Madison's election, and virtually assured the ratification of the Constitution by the powerful state of Virginia. In 1791 Leland returned to Massachusetts, making his home in Cheshire, in the northwest portion of the state. Here he lived most of the remaining years of his life.

His second great contribution was in helping to secure the overthrow of the established Church in Connecticut and Massachusetts, and the guarantee of complete religious freedom in these states.

In 1794, while still a Masschusetts resident, he addressed a crowd of angry Baptists from the steps of the Connecticut state capitol, urging them to work for freedom of conscience and complete separation of Church and State.[318] In 1806 he urged that Connecticut call a constitutional convention in the interest of disestablishing the Congregational Church and securing complete religious freedom—not finally achieved until over a decade later. His sermons included many powerful and moving appeals for religious freedom under such titles as "The Connecticut Dissenters' Strong Box," and many others protesting against the standing order with its state tithes, its worldly ministers, etc., and demanding a written constitution with proper safeguards. He advised his followers to throw support to the Republican party in spite of the deists in its midst, as only in this way could the Congregationalist-Federalist grip on Connecticut be broken.[319]

With the same object in mind he served in the legislature of Massachusetts from the town of Cheshire in 1811. Some idea of his views at this time may be seen by an amusing incident. When he went to preach in a certain town where there was no Baptist church, the Congregationalists consented to his use

of their meetinghouse, provided he would preach on the text which they would assign him at the commencement of the service. As he mounted the pulpit steps he found the text to be "And Balaam saddled his ass." He quickly stated that if he had searched through the Bible he could not have found a more appropriate text. "It brings to our view," he said, "three things—a *prophet,* an *ass,* and a *saddle.* Balaam, the Prophet, who loved the wages of unrighteousness,—and he well represents the class who oppress their fellowmen [otherwise the Congregationalists]; the ass, a patient bearer of grievous burdens, represents those who are opposed by them; and the saddle is the unrighteous exaction that is made of these down-trodden denominations. . . ."[320] This was his view of the taxes which the Baptists were forced to pay to help support the standing order.

In 1820, in his *Short Essays on Government,* he proposed an amendment to the Constitution of Massachusetts to separate Church and State. Leland was one of the foremost early advocates in the United States of complete religious freedom. He had contempt for mere toleration.

> Government should protect every man in thinking and speaking freely, and see that one does not abuse another. The liberty I contend for is more than toleration. The very idea of toleration is despicable; it supposes that some have a pre-eminence above the rest to grant indulgence; whereas all should be equally free, Jews, Turks, Pagans and Christians. Test Oaths and established creeds should be avoided as the worst of evils.[321]

His breadth of view in these matters is shown by his conviction that liberty of conscience should be shared by slaves as well as by free men. He also opposed restrictions frequently found in state laws in the South which prevented worshipers from assembling at services at the times and places most convenient to them.[322] It was characteristic of his independence that he was one of the few prominent clergymen in Massachusetts who supported Thomas Jefferson for the presidency. This he did because of his belief in Jefferson's liberalism and especially his strong views on religious freedom. In 1801 occurred the best-known incident of his life: his securing the making of the enormous Cheshire cheese, weighing 1,325 pounds, by the people of his community and its presentation to Mr. Jefferson as a present from his congregation.

On Sunday, September 1, 1940, a monument in his honor was erected in the town of Cheshire, where he spent so much of his life. It was designed to commemorate the centenary of the cheese incident, but there were many references by the speakers to the cause of religious freedom.[323]

In our study of the work of the twenty heroes of religious freedom in the two periods of the colonies and of the formation of our government certain im-

portant facts stand out. For instance, we note that there were eight Episcopalians (all laymen), four Baptists (all ministers), two Presbyterians, two Roman Catholics and two Congregationalists, and one representative each of the Quakers and Deists. The Unitarian Church had not been established in this country prior to the adoption of our Constitution and its Bill of Rights. If it had been it is likely that Thomas Jefferson, Benjamin Franklin, and Thomas Paine would have grouped themselves with it, and not impossible that James Madison might have done likewise.

The Episcopalians were all Southern statesmen but Franklin and Livermore. The Baptists were the most active in view of their limited numbers. The fact that the Congregational Church, which we think of as so influential and liberal, is represented by only two names, is surprising. It is due to the fact that New England Congregationalism was so identified historically with the established churches in Massachusetts and Connecticut that most of its leaders were not strong advocates of freedom at the time. Other scholars might select other leaders, such as John Wise, referred to elsewhere,[324] but the list has been prepared as objectively as possible, and it is believed that all the names of major influence have been included. It is interesting to note that they are divided almost equally between ministers and laymen.

The Baptist influence was due mainly to religious conviction. It was this that led the members of this group to advocate and practice adult baptism—feeling that union with the Church should represent the free decision of the individual. It was also doubtless due in part to the fact that they represented a group of people of very small means who found it difficult to contribute the taxes required by the established Puritan churches in the North and the established Anglican churches in the South. They also belonged to a social group out of sympathy with the dominant political elements represented by the churches referred to. The more one goes into the story the more one appreciates the outstanding contribution of their great leader, Roger Williams, in this field; but this has been more generally recognized than that of some of his more humble associates who had equally strong convictions on the subject and worked equally earnestly for the cause. The great memorial of the Protestant Reformation on the walls of Geneva, one of the most impressive public monuments of modern times, has rightly chosen Williams to represent the result in the United States of reform under John Calvin.

Most of the founders of our Federal government believed that religious freedom was ultimately desirable throughout the country. Some of them, as we have seen—such as Madison and Jefferson—were outspoken advocates of it, and it is approved or implied in the writings of Franklin and others; but a majority felt that it was best to make haste slowly. So the Constitution guaran-

teed freedom only as far as the Federal government was concerned, not wishing to jeopardize its passage by unduly antagonizing the believers in Puritan establishments in New England or in Anglican establishments in the South. The action of Virginia in providing for complete religious freedom in 1785, followed by some other states, probably convinced them that the final result for all the states was inevitable.

Chapter V

THE STATE BATTLES FOR RELIGIOUS FREEDOM IN THE REVOLUTIONARY AND EARLY NATIONAL PERIODS

Section 1. THE PRIORITY OF THE STATES OVER THE FEDERAL GOVERNMENT AND FRANCE IN THE BATTLE FOR RELIGIOUS FREEDOM

To understand Church–State relations in this country historically and contemporaneously we must remember that a large measure of religious toleration, and in some cases complete religious freedom, had been won by some of the thirteen original states before the adoption of the Federal Constitution and its Bill of Rights. The fact that the movement for separation of Church and State was already well under way in the newly formed states which had succeeded to the responsibilities of the old colonies was one of the reasons why the Constitutional Convention in Philadelphia in 1787 did not go further in the matter. Indeed, the state-making process had been going on for over a decade. It went back to 1776. In the fall of the previous year New Hampshire had asked for the advice and direction of Congress with reference to administering its affairs, and on November 3 Congress replied, recommending the provincial convention of New Hampshire "to call a full and free representation of the people, and that these representatives, if they think it necessary, establish such a form of government as in their judgment will best produce the happiness of the people." Professor McMaster calls attention to the fact that on the following day, November 4, 1775, "precisely the same advice in precisely the same words was given to South Carolina," and later the same year to Virginia. Early in 1776, informal advances were also made from New York to John Adams suggesting that authority be given by Congress to that colony to form a government.[1]

On May 10, 1776—one month before the Virginia delegation, through Richard Henry Lee (1732–94), submitted to the Continental Congress the resolution that "these United Colonies are, and of right ought to be, free and independent States," and nearly two months before the Declaration of Independence—"The Congress," according to the minutes,

then resumed the consideration of the report from the committee of the whole, which being read was agreed to as follows:

Resolved, that it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs have been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.

Resolved, That a committee of three be appointed to prepare a preamble to the foregoing resolution:

The members chosen, Mr. J[ohn] Adams, Mr. [Edward] Rutledge, and Mr. R[ichard] H[enry] Lee.[2]

On May 15, the draft of the preamble, which we know was drawn up by John Adams, was brought in and agreed to in these words:

The Congress took into consideration the draught of the preamble brought in by the committee, which was agreed to as follows:

Whereas his Britannic Majesty, in conjunction with the lords and commons of Great Britain, has, by a late act of Parliament, excluded the inhabitants of these United Colonies from the protection of his crown; And whereas, no answer, whatever, to the humble petitions of the colonies for redress of grievances and reconciliation with Great Britain, has been or is likely to be given; but, the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction of the good people of these colonies; and whereas, it appears absolutely irreconcileable to reason and good Conscience, for the people of these colonies now to take the oaths and affirmations necessary for the support of any government under the crown of Great Britain, and it is necessary that the exercise of every kind of authority under the said crown should be totally suppressed, and all the powers of government exerted, under the authority of the people of the colonies, for the preservation of internal peace, virtue, and good order, as well as for the defence of their lives, liberties, and properties, against the hostile invasions and cruel depredations of their enemies; therefore, resolved, &c.

Ordered, That the said preamble, with the resolution passed the 10th instant, be published.[3]

The ordered publication is found in the *Pennsylvania Gazette* of May 22 of this same year of independence and was thenceforth public property.

So the former colonies went ahead, and with the blessing and without the interference of Congress, readjusted themselves, through "provincial congresses," "colonial assemblies," and other public agencies, to complete separation from Great Britain, by adopting acts and statutes, and in most cases written constitutions, defining their new status. This was the easier as the colonial legislatures had been in the habit of legislating for their internal needs with relatively

little interference. Their new and greater freedom inevitably raised the question of the status of the churches, which were strong in all the colonies, and in most had a direct or indirect connection with the government, preventing complete religious freedom. It is with the battles over this highly important issue—for there were legal gaps to be filled even in those freest of colonies such as Rhode Island and Pennsylvania—that this chapter deals.

But before these are taken up in detail we wish to emphasize what is so seldom realized, that these state actions preceded the adoption of bills of rights both by our Federal government and by the French Constituent Assembly. Indeed, it can be shown that the liberal action of Virginia and other states actually profoundly influenced these national actions. It seems important to bring this fact out clearly, as the opinion is often held that the French Revolution with its Declaration of Rights was largely responsible for our ten constitutional amendments guaranteeing various freedoms, including that of religion. It is interesting to know that these derived their major inspiration from discussions held, and action taken, in various American commonwealths a decade before the adoption even of our Federal Constitution.

The "Declaration of the Rights of Man and of Citizens" was adopted by the French Constituent Assembly August 26, 1789, after a week's debate.[4] Although it, unfortunately, has nothing to say about the *duties* of man, and has consequently been attacked by Burke and others, the conception of the public rights of the individual has been developed under its influence into the law of most European states as they existed prior to World War II.[5] Its significance lies in the fact that it originated in positive law the idea of the personal rights of the individual members of a state as against the State as a whole—a theory which up to this time had been known only to natural law.[6]

These rights were incorporated in the French constitution of September 3, 1791, as constituting natural and civil rights guaranteed by the constitution. Their influence has been almost equally great outside of France. For instance, the National Constitutional Convention held in Frankfort, Germany, in 1848, adopted "the fundamental rights of the German people" which later in the same year were embodied in the federal law. Similarly, Austria's Fundamental Law of the State, adopted in 1867, also had a section on the general rights of the citizens of the state.[7]

Professor Georg Jellinek (1851–1911) has conclusively shown that the source of the great French Declaration of Rights was not Rousseau's *Contrat social*, which is based on another theory, namely, that of the transference to the community of the various rights of the individual who becomes absorbed in the State. Consequently, the Declaration of Rights is radically opposed to Rousseau's

theory. The latter's work may have had some influence on the style of the Declaration, but not on its views, which may be traced back primarily to the bills of rights which had been already adopted by individual states of the American union.

The Marquis of Lafayette (1757–1834) was largely responsible for introducing the knowledge of these bills into France, and it was he who, on July 11, 1789, moved to enact a declaration of rights and laid a plan for such a declaration before the Assembly.[8] He drew his ideas from the American state declarations and not from the first amendments to the United States Constitution—which were not enacted until after August 26, 1789.

Most American bills of rights were doubtless much influenced by the American Declaration of Independence of 1776, with its reference to the fact that "All men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." But this was merely a general statement. Indeed, Lafayette, in presenting his proposal to the Constituent Assembly, specifically asserted that the American Declaration of Independence merely provided for the general principle of the sovereignty of the people and their right to change the form of government, and that models of his proposed declaration were the state declarations in this country. He said: "But the constitutions which the thirteen states adopted successively, were preceded by declarations of rights, of which the principal ones should serve as rules to the representatives of the people, either to conventions, or in the other exercises of their powers. Virginia was the first to produce a declaration of rights properly so-called."[9]

It is clear, then, that the French Declaration of Rights, which so powerfully influenced Europe, goes back for its origins to the declarations of rights of the several American states, and especially to that of Virginia, which had a powerful influence on both Federal and state constitution-making.

It must be remembered that the convention which adopted the Virginia Constitution met at Williamsburg from May 7 to June 29, 1776, and that the Bill of Rights was adopted on June 12. This, it will be noticed, was three weeks before the American Declaration of Independence, which it profoundly influenced.

The other bills of rights prior to the adoption of the Constitution in 1789 were those of Pennsylvania, Maryland, North Carolina, Delaware, Vermont, Massachusetts, and New Hampshire; while religious liberty was also specifically safeguarded in the constitution of New York adopted in 1777. These American states, in adopting their bills of rights, built on the foundations of colonial rights and privileges, and consequently there was not in some fields, such as the freedom of the press, as much of a change as might have appeared; but it was a

great step forward to have all these rights, with religious liberty and freedom of speech included, specifically recognized by these states in fundamental written constitutions adopted freely by the duly chosen representatives of the people.

An important fact is that these rights are a guarantee of freedom to individuals and to minority groups as well as of protection against arbitrary acts of government. According to them, the individual is not the possessor of rights through favor of the State, but because of his own nature as man he has inalienable and indefeasible rights. "The English laws know nothing of this."[10] Such fundamental rights as religious liberty, the right of assembly, and liberty of the press, are not specifically referred to in the English statutes but are rather protected by the general principles of law.[11]

One of the most remarkable contemporary statements I have seen based on these views and reflecting the Church-State controversy in the formative years of the republic, and the determination of dissenters to do away with any form of establishment, is a petition brought into the Virginia Assembly on November 18, 1784, from Rockingham County "in opposition to the scheme of a general assessment for the support of religion." The paper reads as follows:

To the Honourable the Speaker and house of Delegates now Sitting The Petition of Sundry of the Inhabitants of Rockingham County—Sheweth—That while we pay the greatest Deference to so venerable a Body we may be permitted Submissively to say it is our Humble Opinions that any Majestrait or Legislative Body that takes upon themselves the power of Governing Religion by human Laws Assumes a power that never was committed to them by God nor can be by Man for the Confirmation of which Opinion we shall Cite no less authority than the Great Mr. Lock who says "that the whole jurisdiction of the Majestrait reaches only to civil Concernments and that all civil power Right and Dominion is bounded and confined to the only care of promoting these things" which is so Pertinent that we need not Expatiate on it Onely say that if you can do any thing in Religion by human Laws you can do every thing if you can this year take five Dollars from me and give it to a Minister of any Denomination you may next year by the same Rule take Fifty or what not and give it to one of another or to them of all other Denominations—We think that where ever Religious Establishments hath taken place it hath been attended with Pernicious Consequences for Instance we shall go no further than New England for no sooner was their Religion Established their Ministers ample provided for than Fining Imprisoning Whipping Banishing, &c: Ensued part of which oppressions Continued untill as late as the year 1773 when Several Men were Imprisoned for Ministerial Tax about which time Sundry of their Ministers who had an opportunity to see the Consequence of such laws and practices appeared against them said to Connecticut Legislators. "The Affairs of the State are the proper province of civil Rulers as to the Church of Christ be content to let it stand on its own proper Gospel foundation Regulated by its own Laws and

Guarded by its own Sanctions—and tho' she may appear weak and Feeble and Ready to fall yet the Interposition of worldly power to Establish her and civel Policy to Defend her will only jostle her foundations and sink her the Lower:" To which we would add that it is certain Christianity was first planted and was propogated through the World for three hundred years by truth and love without and often against the use of Secular force can then the power thereof be more plainly denied in any way than by saying (as some does) that it would soon fail if not supported by Tax and Compulsion. For a further proof (if necessary) of its not failing without such human Support—Consider the State of Rhood Island which proved an Asylum for the Distressed and Banished—The State of Pensilvania both of them hath been left intirely free in Religion ever since their first planting one One hundred and forty the other one hundred years and the numerous Inhabitants in the Town of Boston hath enjoyed a like freedom these Ninty years last past. Now we would ask is Religion Lost in any of those places or whether there is not as much of it there as where thought to be well Guarded by human Laws we believe there is and there are proofs enough to Shew that this Liberty hath greatly Contributed to their Wellfare both Civil and Religious and sure we are that there hath not appeared any thing amongst them more Contrary to the Spirit of true Christianity than what is before Related. We Beg Leave to Remark the Inequality of such Tax for considering peoples diferent Situations it can be but forcing one Mans Money from him and giving it for the Advantage or supposed Advaintage of another and in which it is Impossible for himself to Share which is a Grievance we too long laboured under—Again we think it would Infringe upon what ought to be held most Sacred that is our Bill of Rights.

Now if as above the power of Civil Government relates onely to Mens Civil Interests If whereever it hath been attended with pernicious Consequences If Christianity was first planted and propagated through the World for three Hundred years without and often against the Use of Secular force and that is plainly denying the power thereof to say it would soon fail if not supported by Tax and Compulsion If leaving States Intirely free in Religion hath Contributed to their Wellfare both Civil and Religious If a General sess to support Ministers would be Inequal therefore a Grievance And if it would Infringe on our Bill of Rights We humbly Beg that your Honourable house would take it into your Serious Consideration and leave us (as we have the Greatest Expectation you will that is) Intirely free in Religion or rather by a Law Establish us in the freedom we have Enjoy'd for some years past which Right the South Carolina Legislators (to their lasting Honor) hath confirm'd their Constituents in several years ago—As the original Design of Vestrys is now Ceas'd we desire that our Vestry may be Disolved and Overseers of the poor chosen in their Stead.[12]

This petition, evidently written by humble people of sagacity, with its references to the right ideas of religious freedom based on the two main streams of influence at the time—the modern philosophers led by John Locke and the teachings of Christianity[13]—and its comments on progress in various American

states, may well serve as an introduction to our study of the early battles which resulted in the separation of Church and State in the United States.

Section 2. THE BACKGROUND OF COLONIAL VICTORIES IN MARYLAND, RHODE ISLAND, AND PENNSYLVANIA

The religious freedom secured under the state and Federal constitutions can be understood only as we realize the earlier victories in three colonies. These were in order:

Maryland, which granted toleration to all Trinitarian Christians in 1649. This was due to the efforts of the proprietor, Cecil Calvert (1606–75), Second Lord Baltimore, a Roman Catholic, and its character and significance are described where he is dealt with as a leader in the cause of religious freedom.[14] Unfortunately, and not the fault of the original proprietary, this was not of long duration.

Rhode Island, whose charter, secured from King Charles II in 1663, provided for complete religious freedom. This was due mainly to the efforts of the Reverend John Clarke (1609–76), leader of the liberal colony of Aquidneck.[15] He was a coworker of Roger Williams (*c.* 1604–83), the most advanced and effective advocate of religious freedom in colonial times. Its provisions are given in the sketch of Williams.[16]

Pennsylvania, whose "Frame of Government" granted by William Penn (1644–1718) in 1683 provided that all who believed in "One Almighty God" should be protected and all who believed "in Jesus Christ the Saviour of the World" were capable of holding civil office. Penn's efforts for religious freedom are described in another section.[17] They also had marked influence on Delaware, which for most of the colonial period was under Pennsylvania's jurisdiction.

These were the most successful colonial experiments in religious freedom which the transformers of colonies into states and the framers of our American Constitution had before them. Of these the most consistent was Penn's colony, with Rhode Island a close second, and it is interesting to note that it was in these two colonies mentioned that universities were developed prior to the Revolution with a more tolerant attitude on religious matters than was shown elsewhere—namely the University of Pennsylvania and Brown University.

The former had its beginnings, at least as a preliminary project, in the "New Building" erected by Franklin and other middle-class men to meet the needs for "a Charity School for the instruction of Poor Children gratis in useful Literature and the Knowledge of the Christian Religion; and also for a House

of Public Worship, the Houses in this place being insufficient to contain the great numbers who convene, . . ."[18] for Whitefield meetings and other services, where all Protestant ministers might preach who were "sound in doctrine, acquainted with the religion of the heart."[19] The building's educational uses lagged, and the revival spirit under George Whitefield (1714–70) ebbed. Consequently the building was taken over by a group of more influential trustees who, with a royal charter making them self-perpetuating, established in 1749 an academy, and were the real founders of what in 1753 received a charter from the proprietaries of the province in England as "the College, Academy and Charitable School of Pennsylvania."[20] The academy's trustees were made up of Episcopalians—the largest group—Quakers, and Presbyterians. It was consequently a privately controlled undenominational institution, being dependent neither on the state nor on any Church for policy and support. Franklin, who was the first president of the trustees, continued prominent in the movement, although the educational policy—combining the classical and the modern—represented a compromise. Here then is the first college in the Americas that was nonsectarian, even though Episcopal influence was dominant. As the historian of the university states, "There was little mention of religion in either the Proposals or the Constitution [both 1749]. It was understood that there should be no sectarianism; it was claimed that the Trustees were selected 'without regard to difference of religious persuasion.' . . ."[21] This generally understood plan of free and unlimited Catholicism"[22] on which the college was founded was in the main continued, the provost for some time being an Anglican, the vice provost a Presbyterian, and one of the leading professors a Baptist, with Quakers well represented in the student body. Indeed, the appeals for funds made by Provost William Smith (1727–1803) in England were based on the nonsectarian character of the college.[23] When the colony became a state the new charter from the legislature in 1779 still further and more specifically broadened the undenominational character of the institution, as we shall see in a later section.[24]

Brown's charter—for the College of Rhode Island (1764)—not only stated that "all the Members hereof shall forever enjoy full, free, absolute and uninterrupted Liberty of Conscience,"[25] but provided that although Baptists should be in the majority on the board of trustees, it should also include Anglican, Congregational, and Quaker representatives, thus helping to satisfy the four most prominent religious groups in the state.

These were the two colleges which approached in the late colonial period most nearly to the larger breadth of view with reference to denominational co-operation which was to be a marked feature of the Revolutionary age.

Section 3. THE EPOCH-MAKING STRUGGLE AND THE EARLIEST VICTORY—VIRGINIA

(1) THE HISTORICAL BACKGROUND

The struggle which took place in Virginia in its last days as a colony and its early days as a state needs special attention, as it influenced the American theories of Church-State separation and religious freedom more than any other historical factor. Indeed, it is doubtful if any other legislative body ever had so significant a debate on the subject. Those who took the leading part in it—Thomas Jefferson, James Madison, George Mason, and Patrick Henry—were all men of great ability. They were all powerful advocates of civil liberty, and—with some lapses on the part of Patrick Henry—were such profound believers in religious liberty that we have already included sketches of their contributions to the cause.[26] There were also on the side lines able Baptist and Presbyterian ministers who prepared for or stimulated the movement, especially Samuel Davies and John Leland.[27] The debate was conducted on a high plane, and it touched upon most of the fundamental matters with which these volumes are concerned. It has therefore seemed important to deal with the developments in some detail, with quotations from the more important speeches, memorials, and legislative acts of the time. Virginia was now to take the place of leadership in the cause of religious freedom held in the middle of the seventeenth century by Rhode Island.[28] And here again the Baptists, now supported by Presbyterians and other dissenters, as well as by a remarkable group of political philosophers, were to play a leading part; but this time it was against the entrenched Episcopalians, instead of against the New England Puritans.

Some impression of the Anglican attitude may be seen in a letter written by James Madison, himself associated by early training with the Established Church and so not a prejudiced witness against that communion. Writing under date of April 1, 1774, when the religious battle in the Old Dominion was acute, to a college friend in Pennsylvania, where the traditions of religious toleration were much more liberal, he spoke of the absence in Virginia of a "liberal catholic and equitable way of thinking, as to the rights of conscience. . . ."[29]

We are here concerned primarily with the great Bill for Establishing Religious Freedom of 1785 and the events of the previous decade—that is, the period immediately following the letter just quoted. To understand the results we must remember that the Virginia colony was in its inception mainly a mercantile venture; that from 1662 on, for about a century, its General Assembly required ministers to present evidence of ordination by an English bishop, and

the governor and council were empowered to silence the teaching or preaching of all other persons; that the Episcopal Church had been long and exclusively established in Virginia and was largely endowed with land; that the leading statesmen, especially in the tidewater region, had been identified with it; that it was both class-conscious and spiritually inactive; that its ministers were mostly latitudinarian in tendency, lacking in seriousness of purpose, unsympathetic with the zeal of the Methodists, whom they denounced for their "fanaticism" and "enthusiasm," and opposed to giving up their exclusive public prerogatives; and that the Presbyterians and Baptists, who had been coming in large numbers into the Shenandoah Valley and adjoining regions, and had a vital religious message to give to the people, were greatly hampered in their work by restrictive laws. Some of these factors, and especially the last, we have discussed in an earlier section, where the foundation work for religious freedom in Virginia of the Reverend Samuel Davies and the Hanover Presbytery,[30] from the middle of the eighteenth century on, has been described.

The beginnings of effective organized Church opposition to the ecclesiastical situation go back to the discussion of the payment of clerical salaries. These stipends were fixed by law in pounds of tobacco, a staple much used as a currency in certain parts of the South. Eight tons of tobacco a year was the customary salary. Owing to deficient crops in 1755 and 1758, the price of tobacco had risen, and payments in it at this rate often involved special hardships on vestries. The Virginia Assembly, to relieve the situation, made debts payable at the rate of twopence to the pound of tobacco—much less than the market price, which was six cents a pound. This law, as Eckenrode has pointed out, affected all creditors and all officers of the government, but especially the clergy, who were seldom large planters and who consequently received no compensating benefit by the rise in tobacco prices.[31]

The clergy resisted the commutation, believing it contrary to statutes enacted for their protection, and induced the Board of Trade to persuade the British government to invalidate the act. They further tried to force their parishioners to pay them the difference between this legal rate and the market price. It was in this controversy—known as the Parson's Cause, because a parson in Hanover County, the Reverend James Maury, sued for the payment of back salary, which had been paid at the new rate and in paper money—that Patrick Henry[32] (1736–99) came to the front in 1763 by resisting, on behalf of the vestry, the enforcement of the British government's decision. He claimed that the king by vetoing the law was guilty of tyranny. His eloquence resulted in the jury's giving the parson only one penny as damages! The effort of the clergy, for personal purposes and in opposition to the wishes of the people, to thwart the will of their own Assembly, made them very unpopular, although it could be said on

their behalf that they were resisting the dangerous tendency of the Assembly to interfere in church affairs by changing salaries to the disadvantage of the ministers. On the whole, the Parson's Cause injured the prestige both of the establishment and its ministers, and encouraged the dissenters.[33] Indeed, we are told that the action of the king and council in declaring invalid the act of the Virginia Assembly was one of the causes leading to Virginia's strong stand on independence.[34] Patrick Henry was an Anglican with a Presbyterian mother, and the Presbyterians and Baptists from this time on co-operated heartily in the attempt to overthrow the establishment and secure independence of Church and State.

The battle was one in which the liberal forces—political, economic, social, and religious—were, speaking generally, aligned against the conservative and strongly intrenched Episcopal Church. Many factors contributed to the result, but among these the interest of the Baptists, the Presbyterians, and the political philosophers was dominant. The last named were especially George Mason, Thomas Jefferson, and James Madison, whose contributions to religious freedom have been described.[35] We shall deal with the three groups separately, for although this method may entail some slight repetition, it alone will enable us to bring out clearly the major group factors which produced religious freedom in Virginia, and also largely through Virginia in the United States as a whole.

(2) THE CONTRIBUTIONS OF THE BAPTISTS

We may well begin with the Baptists. They were always the friends of religious freedom in the early days in America, partly because they were poor and had difficulty in meeting the taxes for the Established Church, and partly because they had religious convictions inherited from the Anabaptists on the importance of the entire independence of the Church from the State. They had contributed the greatest leader to the cause of religious freedom in the America of the seventeenth century, namely, Roger Williams,[36] who had had the advantage of the best university education England could afford. In this latter respect they were less fortunate in the Virginia of the same century, for, as a historian of the Baptists informs us, not one of their early ministers in Virginia had acquired a college education.[37] They were, however, very zealous in the cause, and did much to create the support which Jefferson, Madison, and Mason used so effectively in securing legislation from the Assembly.

The first Baptist missionary appeared in Virginia in the second decade of the eighteenth century.[38] Results were, however, extremely meager prior to the middle of the century, when the Philadelphia Association of Baptists became interested, several strong churches being founded in the 'fifties and 'sixties.

The Ketokton Church in Loudoun County became the center of an association of Baptist churches formed in 1776 and named after it,[39] although in the ten years before independence about thirty of the ministers of this vigorous nonconforming denomination were imprisoned for preaching without a license, agitating for full religious freedom, or in other ways trying to change the status quo.

The Baptists in Virginia in the early days had been either General or Regular Baptists, but a new group, Separate Baptists, was introduced in the middle of the century from New England. This group made great progress in the decade from 1760 to 1770.[40] Fortunately, in 1787 the earlier groups, the Regular and Separate Baptists, were united into the "United Baptist Churches of Christ, in Virginia," a union which greatly strengthened their forces. They were drawn together by their common struggle against ecclesiastical oppression, a struggle in which the General Committee of the Separate Baptists had taken the lead. Their rapid growth was undoubtedly largely due to the lack of vital religion among many if not most of the clergy of the Established Episcopal Church.

But let us go back a little and see the beginnings of Baptist interest in religious freedom in Virginia, an interest not so well known as that which we have described under Roger Williams[41] and John Clarke[42] in Rhode Island, but destined to develop a leader at least comparable to Clarke in significance, John Leland.[43]

It is significant that the first petition to the House of Burgesses of Virginia regarding religious freedom came from the Baptists. The *Journal* of May 26, 1760, shows that among other things they prayed for relief from "the hardships they suffer from the prohibition to their ministers to preach in meeting-houses, not particularly mentioned in their licenses."[44] In 1772 they began their long series of strong memorials to the Assembly for "Liberty of Conscience." They declined to accept any act of mere toleration. They wanted absolute freedom in religious and church matters.

The General Association (Baptist) in 1774 agreed to set apart public fast days in behalf "of our blind persecutors, and for the releasement of our brethren."[45] The following year its representatives appeared before the provincial convention and secured some minor concessions.[46] This year it also began to circulate petitions to the General Assembly for the abolition of the church establishment and the protection of all religious societies in the peaceable enjoyment of their own religious principles and modes of worship.[47]

In August, 1775, the Association adopted an address to the Colonial Convention of that year, which was merely the House of Burgesses acting under a new name during the Revolutionary period, in which it expressed an earnest desire that its ministers should be given "the liberty of preaching to the troops at con-

venient times, without molestation or abuse. . . ."[48] This simple request proved an opening wedge for the full religious freedom which the Baptists were to secure before the end of the century.[49]

Dr. Hawks in his *History of the Protestant Episcopal Church of Virginia* states that he believes this to have been the first step made toward placing the clergy of all denominations upon an equal footing in the State.[50]

In the same year the Committee on Religion of the House of Burgesses reported a toleration law, which had been ordered drafted six years earlier, "exempting his Majesty's Protestant Dissenters from the Penalties of certain Laws."[51] The committee's proposal was unsatisfactory to the Baptists. They complained that a bill "not admitting public Worship, except in the day time, is inconsistent with the laws of England, as well as the Practice and Usage of the Primitive Churches, and even of the English Church itself; that the night season may sometimes be better spared by the Petitioners from the necessary duties of their callings; and that they wish for no indulgences which may disturb the Peace of Government. . . ."[52] The Hanover Presbytery also opposed the new toleration bill, and it was never passed.

It is interesting to note that the convention of 1776, which adopted the Declaration of Rights,[53] received, according to James, only one petition from any religious body. That was, of course, from the Baptists, who saw a good opportunity to advance their favorite cause. Their memorial outlined many proposals on which the state was to act favorably in the course of the next few years. Here is the way it appears in the *Journal* of the convention, under date of June 20.

> A petition of sundry persons of the Baptist church, in the county of Prince William, whose names are thereunto subscribed, was presented to the Convention and read, setting forth that at a time when this colony, with others, is contending for the civil rights of mankind, against the enslaving schemes of a powerful enemy, they are persuaded the strictest unanimity is necessary among ourselves; and, that every remaining cause of division may, if possible, be removed, they think it their duty to petition for the following religious privileges, which they have not yet been indulged with in this part of the world—to wit: That they be allowed to worship God in their own way, without interruption; that they be permitted to maintain their own ministers, and none others; that they be married, buried, and the like, without paying the clergy of other denominations; that, these things granted, they will gladly unite with their brethren and to the utmost for their ability promote the common cause. Ordered that the said petition be referred to the Committee of Propositions and Grievances; that they inquire into the allegations thereof, and report the same, with their opinion thereupon, to the Convention.[54]

When the first meeting of the General Assembly, that is, the first republican

legislature of Virginia to be elected after the Declaration of Independence, met at Williamsburg on October 7, 1776, it had presented to it many petitions on the subject of religious freedom. Nine of these were against the establishment, coming some from dissenters in general, others from the Baptists—who were actually the most numerous—one from the Lutherans, and one from the Hanover Presbytery. The Baptist Association had appointed a committee to "inquire whether any grievances existed in the civil laws, that were oppressive to the Baptists."[55] As marriages could be legally effected only by the Episcopal clergy, the committee reported that the marriage law was both "partial and oppressive,"[56] and favored memorializing the Assembly "for a law affording equal privileges to all ordained ministers of every denomination."[57] The Baptists were alert on all issues involving Church-State separation and religious freedom, and constantly emphasized the point that civil and religious liberty should go hand in hand.

At this time there was much agitation in the state regarding a general assessment for the support of ministers of religion, it being understood that if this were adopted each individual might have the right to determine the church or minister to which his assessment should be paid. This the Baptists also opposed. It involved what was virtually the plan tried in the nineteenth century in certain European countries, namely, a form of jurisdictionalism by which all the most numerous religious bodies, rather than a single one, should receive state support. In this case it meant Presbyterians, Methodists, and Baptists, as well as the Episcopalians. This agitation will be discussed at length later.[58]

The time was not yet ripe for the major issues to be decided by the Assembly. It did, however, repeal certain laws restraining religious freedom, and exempted dissenters from the required support of the still existing Episcopal establishment.

A few years later (November 8, 1780) the Baptists presented a petition which stated that their goal was complete religious freedom, and, as steps toward it, advocated the repeal of the Vestry Law and the authorization to other than Episcopal ministers to solemnize marriages. The latter was a matter on which they felt so strongly that the previous year, taking the advice of Patrick Henry, Baptist ministers began to officiate at weddings, hoping that this would lead to the amendment of the laws. It did not have the effect immediately, but later the Assembly passed a special act sanctioning the marriages thus celebrated.[59] The petition of the Baptists deserves reproduction at some length.

That this heaven born Freedom, which belongs equally to every good citizen, is the Palladium which the Legislature is particularly intrusted with the Guardianship of, and on which the Safety and Happiness of the State depend. Your Memorialists therefore look upon every Law or Usage now existing among us, which does not accord with that Republican Spirit which breathes in our Constitution and Bill of Rights, to be

extremely pernicious and detrimental, and that such Law or Usage should immediately be abolished. . . .

As the Completion of Religious Liberty is what, as a Religious Community, your Memorialists are particularly interested in, they would humbly call the Attention of your Honourable House to a few Particulars, viz. First the Vestry-Law which disqualifies any person to officiate who will not subscribe to be conformable to the Doctrine and Discipline of the Church of England; by which Means Dissenters are not only precluded, but also not represented, they not having a free voice, whose Property is nevertheless subject to be taxed by the Vestry, and whose Poor are provided for at the Discretion of those who may possibly be under the Influence of Party-Motives—And what renders the said Law a Greater Grievance is, that in some Parishes, so much Time has elapsed since an Election, that there is scarcely one who was originally chosen by the People, the Vacancies having been filled up by the remaining Vestrymen—Secondly, the Solemnization of Marriage, concerning which it is insinuated by some, and taken for granted by others that to render it legal it must be performed by a Church Clergyman, according to the Rites and Ceremonies of the Church of England; conformably to which Sentiment Marriage-Licenses are usually worded and directed.—Now, if this should in Reality be the Case, your Memorialists conceive that the ill Consequences resulting from thence, which are too obvious to need mentioning, render it absolutely necessary for the Legislature to endeavour their Removal—This is an Affair of so tender a Nature, and of such Importance, that after the Restoration, one of the first Matters which the British Parliament proceeded to, was the Confirmation of the Marriages solemnized according to the Mode in Use during the Interregnum, and the Protectorship of Cromwell—And the propriety of such a Measure, in Virginia, evidently appears from the vast Numbers of Dissenters, who having Objections against the Form and Manner prescribed in the Book of Common Prayer proceed to marry otherwise; and also that in many Places, especially over the Ridge there are no Church Parsons to officiate—On the other Hand if Marriages otherwise solemnized are equally valid, a Declaratory Act to that Purport, appears to your Memorialists to be highly expedient, because they can see no Reason why any of the free Inhabitants of this State, should be terrified by a mere Mormo [hobgoblin] from their just Rights and Privileges; or censured by others on Suspicion of their acting contrary to Law—To these Considerations your Memorialists would just beg leave to add that those who claim this Province of officiating at Marriage-Solemnities as their sole Right, undertake at the same Time to be the sole Judges of what they are to receive for the same.[60]

This request was complied with by the passing in December of the same year of a long overdue act "declaring what shall be a lawful marriage" and treating the different religious denominations of Christians for the first time with some measure of fairness in this matter. It declared that any minister of a Christian society might perform the ceremony, provided that this was accompanied by a license or a publication of banns, except in the case of Quakers or Mennonites,

for whom a somewhat modified provision was made. Judges were authorized to issue licenses to four ministers of each sect in a county to perform the marriage ceremony within the bounds of that county alone. Ministers might demand a fee of twenty-five pounds of tobacco and no more.[61]

In the spring of 1783 a Baptist petition for full equality said:

> We do not ask this, Gentlemen, as a favour which you have a privilege either to grant or withhold at pleasure, but as what we have a just claim to as freemen of the Commonwealth, and we trust it is your glory to consider yourselves not as the masters but servants of the people, whom you have the honour to represent, and that you will not fail in any instance, to recognize the natural rights of all your constituents.[62]

Later in the same year the Baptists of Powhatan County reminded the Assembly that "while we were opposing our enemies in the field, we were petitioning our rulers at the helm of legislation, to set us free from the yoke of religious oppression, which we long groaned under from the former government."[63]

In 1784 the General Committee of the Baptists (which had been established the previous year) had as its major purpose the consideration of "all the political grievances of the whole Baptist Society in Virginia."[64] In 1785 the committee, at its first meeting, voted to ask the General Assembly to repeal the marriage laws and the vestry laws, both of which favored the Episcopalians, and to give up the proposal for a general assessment for the support of ministers of religion.[65] They objected to these on the ground that they ran counter to their principles of separation of Church and State.

The resolutions of the General Committee on this matter of ministerial support are so important that it seems well to quote them at length:

> Resolved, That it be recommended to those counties which have not yet prepared petitions to be presented to the General Assembly against the engrossed bill for a general assessment for the support of the teachers of the Christian religion, to proceed thereon as soon as possible; that it is believed to be repugnant to the spirit of the gospel for the Legislature thus to proceed in matters of religion; that no human laws ought to be established for this purpose, but that every person ought to be left entirely free in respect to matters of religion; that the holy Author of our religion needs no such compulsive measures for the promotion of his cause; that the gospel wants not the feeble arm of man for its support; that it has made, and will again, through divine power, make, its way against all opposition; and that should the Legislature assume the right of taxing the people for the support of the gospel, it will be destructive to religious liberty.[66]

A great debate ensued in the Assembly, but with the aid of Jefferson, Madison, and Mason, in spite of the somewhat restrained views of George Washington

and the opposition of other eminent statesmen, the general assessment plan was defeated in the Assembly in 1786.[67] This ended the attempt to help support the churches from public taxation.

The same year the General Committee resolved:

That petitions ought to be drawn and circulated in the different counties and presented to the next General Assembly, praying for a repeal of the incorporating act, and that the public property which is by that act vested in the Protestant Episcopal Church be sold and the money applied to public use, and that Reuben Ford and John Leland attend the next Assembly as agents in behalf of the General Committee.[68]

One of the Baptist appeals at about the same time (1786) expresses so clearly their conviction as to the vital importance of having Church and State exist separately, that it is here reproduced:

New Testament Churches, we humbly conceive, are, or should be, established by the Legislature of Heaven, and not earthly power; by the Law of God and not the Law of the State; by the acts of the Apostles, and not by the Acts of an Assembly. The Incorporating Act then, in the first place appears to cast great contempt upon the divine Author of our Religion, whose Kingdom is not of this world, and Secondly, to give all the property of the State established church to one Society, not more virtuous, nor deserving than other Societies in the Commonwealth, appears contrary to justice, and the express words of the IV Art: of the Bill of Rights, which prohibits rewards or emoluments to any Man, or set of men, except for services rendered the State; and what services that Church has rendered the State, either by her Clergy or Laity, more than other Churches have done, we know not.

If truth is great, and will prevail if left to itself (as declared in the Act Establishing Religious Freedom) we wish it may be so left, which is the only way to convince the gazing world, that Disciples do not follow Christ for Loaves, and that Preachers do not preach for Benefices.[69]

The theory of the Baptists was that the Declaration of Rights prohibited the regulation of ecclesiastical affairs by the legislature, and consequently that the latter had no right to adopt any regulations for the Episcopal Church. With the help of other groups, they were successful in securing the repeal of the Incorporation Act, but the glebe lands were still left in the hands of the Episcopal clergy, in spite of the feeling of a majority of the General Committee that they should be considered as public property.

In 1788 the General Committee interested itself in the Federal Constitution. It was the unanimous opinion of its members that it did not provide adequately for religious liberty. The fine letter sent by the Reverend John Leland (1754–1841), on behalf of the committee, and President Washington's reply, are referred to in other sections.[70] Suffice it to add that the committee stated it

"feared that the liberty of conscience, dearer to us than property or life, was not sufficiently secured. Perhaps our jealousies were heightened by the usage we received in Virginia, under the regal government, when mobs, fines, bonds, and prisons were our frequent repast."[71] The General Committee was consequently active in securing the first amendment of the Bill of Rights.

Some realization of the determined and effective work of the Baptists in the cause of religious freedom may be gained by Leland's statement in 1790 that the matter "has been so canvassed for fourteen years, and has so far prevailed, that in Virginia, a politician can no more be popular without the possession of it, than a preacher who denies the doctrine of the *new birth*. . . ."[72] In 1799 the General Committee of the Baptists disbanded after the measure for the confiscation of the glebe lands had been adopted.

In considering the influence of the Baptists on religious freedom in Virginia we should bear in mind that their General Committee did not merely pass resolutions which had been prepared by some central agency in New York, as is so often done today, but that its members determined their own policy and carried it through with great resourcefulness, and in spite of powerful opposition. They appointed committees frequently to present their views to the General Assembly, where the Reverend John Leland[73] was often their able spokesman, and in every other legitimate way in their power brought pressure to bear on the legislature to alter the old laws which hampered their work and gave special privileges to the Episcopal Church.

We may well close this section with a quotation from Thomas Jefferson. In many ways he differed in his intellectual, social, and religious outlook from the Baptists, but on at least two points they saw eye to eye: both were interested in true democracy, the cause of the rank and file of men, especially of the underprivileged; and both were profoundly interested in religious freedom. Replying in April, 1809, a month after his retirement from the presidency, to an address from the members of the Baptist Church of Buck Mountain in Albemarle, he said: ". . . We have acted together from the origin to the end of a memorable Revolution, and we have contributed, each in the line allotted us, our endeavors to render its issue a permanent blessing to our country. . . ."[74]

(3) THE CONTRIBUTION OF THE PRESBYTERIANS

Thanks largely to the intelligently directed efforts of the Reverend Samuel Davies (1724–61), whose contributions to religious liberty we have already discussed,[75] the Hanover Presbytery was active from early days in the cause. Its members drew up, in November, 1774, and presented to the House on June 5, 1775, a petition which expressed the feelings of dissenters in Virginia at the time. Its major demands may be thus summarized: (1) that the penalties in-

flicted on those who disturbed their meetings be the same as for those who disturbed the establishment; (2) that freedom in speaking and writing upon all religious subjects be granted them; (3) that they be given the right to hold property for the support of their schools and churches; (4) that nothing in the Act of Toleration render them suspicious or odious to their countrymen; (5) that they be allowed "to have and enjoy the full and free exercise of our religion, without molestation or danger of incurring any penalty whatsoever."[76] The petition did not specifically attack the establishment of the Episcopal Church, nor did it come out squarely for the fullest measure of religious freedom.

At the first republican legislature of the independent state the earliest dissenter petition came into the house on October 7, 1776, from the largely Presbyterian county of Prince Edward, pledging allegiance to the new government and urging complete disestablishment.

> The last article of the Bill of Rights we also esteem as the rising Sun of religious Liberty, to relieve us from a long night of ecclesiastic Bondage; and we do most earnestly request and expect that you would go on to complete what is so nobly begun; raise religious as well as civil Liberty to the zenith of Glory, and make Virginia an Asylum for free enquiry, knowledge, and the virtuous of every Denomination. Justice to ourselves and posterity, as well as a regard to the honour of the Common-Wealth, makes it our indespensable Duty, in particular to intreat, That without Delay, you would pull down all Church Establishments; abolish every Tax upon Conscience and private judgment * * * and define accurately between civil and ecclesiastic authority; then leave our Lord Jesus Christ the Honour of being the Sole Law giver and Governor in his Church.[77]

Very soon thereafter the Hanover Presbytery, October 24, 1776, memorialized the Virginia government to dissolve the union of Church and State, thus leaving the support of the ministry and the work of preaching to its own friends. It took the ground that the union of Church and State was inconsistent with the Declaration of Rights of the colony. They were specially stirred because dissenting ministers who had recently come into the frontier counties of the Shenandoah Valley, in which there were only a few Episcopalians, were compelled by law to bear the burden of building Episcopal church edifices. They sought no financial help from the government themselves, believing that no Church should receive secular aid, but demanded that every law in any way countenancing religious domination be immediately repealed, and that every religious sect be protected in its mode of worship. Such a memorial in the year of the Declaration of Independence was highly significant.

Some quotations from this document are worth making:

> In this enlightened age, and in a land where all of every denomination are united

in most strenuous efforts to be free, we hope and expect our representatives will cheerfully concur in removing every species of religious as well as civil bondage. Certain it is, that every argument for civil liberty gains additional strength when applied in the concerns of religion; and there is no argument in favor of establishing the Christian religion but what may be pleaded with equal propriety for establishing the tenets of Mahomet by those who believe in the Alkoran; or if this be not true, it is at least impossible for the magistrate to adjudge the right of preference among the various sects that profess the Christian faith, without erecting a chair of infallibility, which would lead us back to the church of Rome. . . .

We would also humbly represent that the only proper objects of civil government are the happiness and protection of men in their present state of existence, the security of the life, liberty, and the property of the citizens, and to restrain the vicious and to encourage the virtuous, by wholesome laws equally extending to every individual; but that the duty which we owe to our Creator, and the manner of discharging it, can only be directed by reason or conviction, and is nowhere cognizable but at the tribunal of the Universal Judge.

Therefore we ask no ecclesiastical establishment for ourselves, neither can we approve of them and grant it to others: this, indeed, would be giving exclusive or separate emoluments or privileges to one set (or sect) of men, without any special public services, to the common reproach or injury of every other denomination. And, for the reasons recited, we are induced earnestly to entreat that all laws now in force in this commonwealth which countenance religious domination may be speedily repealed—that all of every religious sect may be protected in the full exercise of their several modes of worship, and exempted from all taxes for the support of any church whatsoever, further than what may be agreeable to their own private choice or voluntary obligation. This being done, all partial and invidious distinctions will be abolished, to the great honor and interest of the state, and every one be left to stand or fall according to merit, which can never be the case so long as any one denomination is established in preference to others.[78]

We shall see later[79] that the memorial was highly influential. This is beginning to be so recognized by historians, as witness its recent publication in Professor Commager's *Documents of American History*.[80]

The Hanover Presbytery in 1778 came forward with another well-reasoned proposal opposing the plan of a general assessment for the support of religion in the state. This plan had the endorsement of many eminent people. It would have given financial aid to the Presbyterians and other dissenting groups as well as to the Episcopalians, but the Presbytery, after opposing any form of union between Church and State, declared:

Neither does the Church of Christ stand in need of a general assessment for its support; and most certain we are persuaded that it would be no advantage, but an injury to the society to which we belong; and we believe that Christ has ordained a complete

system of laws for the government of His kingdom, so we are persuaded that by His providence, He will support its final consummation.[81]

As we shall see in discussing the work for religious liberty of the philosopher-statesmen of Virginia,[82] this point of view ultimately prevailed in spite of weighty opposition.

Again the presbytery, though recognizing that the Assembly of the state was becoming more liberal, complained that "the security of religious rights was left to the precarious fate of common law, instead of being made a fundamental part of our Constitution as it ought to be."[83] Its attitude was further shown in 1784 when it not only continued to oppose the general assessment plan for the support of the Christian religion and worship, as favored by the Episcopalians and some Presbyterians, and urged by Patrick Henry, but adopted a resolution to the effect that

> We hope that no attempt will be made to point out articles of faith, or to settle modes of worship, or to interfere in the internal government of religious communities, or to render the ministers of religion independent of the will of the people whom they serve.[84]

In May, 1784, petitions were presented to the Assembly from the Baptist, Presbyterian, and Episcopal Churches for incorporation. The Committee on Religion reported in favor of this for Presbyterians and Episcopalians, and stated that "Like incorporation ought to be extended to all other religious societies within this commonwealth which apply for same."[85] Apparently, however, no bill was passed at the time for the incorporation of any other Church than the Episcopal.

In 1787 we find Presbyterians again making an earnest appeal for religious freedom. They asserted that "love of liberty and political equality" were the "principles which engaged us and carried us through the late glorious contest," and that "we cannot help expressing our sorrow to see how slowly and with what seeming reluctance equal justice is done, and all denominations of Christians in the state are put in possession of their constitutional rights. . . ."[86]

We have quoted mainly from the actions of the Hanover Presbytery because it took the lead, but it was given strong support by other influential Presbyterian groups in various parts of the state.

The Baptists and the Presbyterians were not the only religious bodies which helped to secure religious freedom in Virginia, but they were by far the most active and the most influential. The Lutherans united with them in asking the legislature in October, 1776, to be relieved from further support of the Establishment. The Methodists, who, however, became a church body distinct from the

Episcopalians only near the end of 1784, also helped, though they feared that the abolition of the Establishment might have some bad consequences.

(4) THE CONTRIBUTION OF THE POLITICAL PHILOSOPHERS AND STATESMEN—THE DECLARATION OF RIGHTS (JUNE 12, 1776) AND OTHER ACTS; MADISON'S "REMONSTRANCE"

All careful students of American political history are impressed by the extraordinary number of able political thinkers found in Virginia in the second half of the eighteenth century. The landed gentry of the state, especially in the tidewater section, were given to the study of ancient history, of English political philosophy, and of the whole problem of government. Many of them were political liberals who had been influenced by John Milton (1608–74), Algernon Sidney (1622–83), the friend and adviser of Penn, and especially by John Locke (1632–1704), whose *Two Treatises of Government* appeared in 1690. Among them were three whose contribution to religious liberty was so notable that they have been dealt with independently. They were, in the order of their effective appearance on the political scene as protagonists of the cause, George Mason, Thomas Jefferson, and James Madison.[87] These statesmen, and to some extent Thomas Paine, had all developed, more or less independently, convictions as to the importance of disestablishment and of the fundamental equality of all churches under the law; but they were greatly stimulated to intelligent and vigorous action by the Presbyterian and Baptist groups already mentioned. The dissenting ministers provided the facts of the serious difficulties and handicaps under which they were laboring, and helped to create a strong public opinion demanding a change; while the statesmen gave classic expression to the logical reasons for religious freedom, and formulated in admirable legal form the constitutional provisions and statutes to make it effective.

It should be noted that chronologically the effective efforts of the philosopher-statesmen came only after the ground had been well cleared by the dissenting ministers, and that the former were for the most part connected by membership or association with the Establishment which they overthrew. Mason had been a vestryman, Madison an attendant at the services of the Church, although Unitarian in his tendencies, and even Jefferson had a loose attachment to it. They came from families identified with the Church of England from early days in the colonies, and the electoral system gave the tidewater, where the Church was powerful, the most adequate representation in the legislature. Episcopalians were at this time only a minority in the state, but, owing to the system of franchise and apportionment, they had a good majority in most sessions of the Assembly. With this background Southern historians have been inclined to minimize the part played by dissenters in securing religious freedom,[88] while

Northern historians have sometimes overlooked the fact that the legislative leaders who actually secured religious freedom for all had been reared in the Establishment.

The more important steps which the state legislators proposed, and whose adoption in most cases they secured, were the following:

Declaration of Rights. This passed the House of Burgesses sitting as a constitutional convention at Williamsburg, June 12, 1776, three weeks before the Declaration of Independence was adopted in Philadelphia, and consequently before Virginia became a state. It was mainly the work of George Mason (1725–92), being only slightly modified by the members of the committee, although one modification adopted at the suggestion of James Madison (1751–1836), that of altering the words "the fullest toleration" to "free exercise of religion," changing the emphasis from tolerance to full religious freedom, was highly significant. The final form was Madison's, but its adoption was on the motion of Edmund Pendleton (1721–1803), who was somewhat of a conservative but favored the proposal to prevent more radical action involving disestablishment. The Mason draft thus passed through various modifications at Madison's hands so as to make it more acceptable to other liberals who wanted complete religious freedom and to make sure that there was no State Church. At one stage Madison proposed a clause which would have prevented the general plan for assessment for religion, or support of the Anglican Church, by providing "that no man or class of men ought, on account of religion, to be connected with peculiar emoluments or privileges";[89] but this was too radical a doctrine for the time, although it later had its influence on the Federal Bill of Rights. An account of this declaration and its significance is given above in the sketch of Mason,[90] who laid even better foundations than he realized, for Virginia's action provided the basis on which the other states, and the Federal government itself, acted. It also was highly influential in France and other European countries.[91] Its importance in the state of its origin is shown by the fact that it has always been considered a part of Virginia's organic law.

Removal of Penalties for Dissenters. When the first session of the legislature assembled October 7, 1776, three months after the Declaration of Independence, a "Committee on Religion" was appointed with "instructions" to "meet and adjourn from day to day, and to take under their consideration all matters and things relating to religion and morality, and report. . . ." This is evidence that in one of the two states where the Revolutionary movement was most prominent there was no desire that their efforts for civil liberty should interfere with their historic emphasis on religion.[92] But such a committee was also necessary to take under consideration the series of proposals that were to

make Virginia the first state in the modern world with both complete religious freedom and complete separation of Church and State.

The memorial regarding religious freedom adopted by the Hanover Presbytery[93] in October was referred to this committee, of which Thomas Jefferson (1743–1826) was chairman. He was entirely in sympathy with it, calling attention to the fact that two-thirds of the citizens of Virginia were dissenters, though the legislature, being made up mainly of the aristocratic, land-holding class, had a majority of Episcopalians.[94] The views on the question were so varied that the members of the Committee on Religion could not agree on a report. The petitions from the various religious societies were therefore taken out of the hands of this committee and referred to the Committee of the Whole House upon the State of the Country. Ten days thereafter certain resolutions were adopted by the House of Delegates, of which these are the most important for our purpose:

Resolved, as the opinion of this committee, that all and every act or statute, either of the parliament of *England* or of *Great Britain,* by whatever title known or distinguished, which renders criminal the maintaining any opinions in matters of religion, forbearing to repair to church, or the exercising any mode of worship whatsoever, or which prescribes punishments for the same, ought to be declared henceforth of no validity or force within this commonwealth.

Resolved, that so much of an act of Assembly made in the fourth year of the reign of queen *Anne,* intituled *An act for the effectual suppression of vice, and restraint and punishment of blasphemous, wicked, and dissolute persons,* as inflicts certain additional penalities on any person or persons convicted a second time of any of the offences described in the first clause of the said act, ought to be repealed.

Resolved, that so much of the petitions of the several dissenters from the church established by law within this commonwealth, as desires an exemption from all taxes and contributions whatever towards supporting the said church and the ministers thereof, or towards the support of their respective religious societies in any other way than themselves shall voluntarily agree, is reasonable.

Resolved, that although the maintaining any opinions in matters of religion ought not to be restrained, yet that publick assemblies of societies for divine worship ought to be regulated, and that proper provision should be made for continuing the succession of the clergy, and superintending their conduct.

Resolved, that the several acts of Assembly, making provision for the support of the clergy, ought to be repealed, securing to the present incumbents all arrears of salary, and to the vestries a power of levying for performance of their contracts.

Resolved, that a reservation ought to be made to the use of the said church, in all time coming, of the several tracts of glebe lands, already purchased, the churches and chapels already built for the use of the several parishes, and of all plate belonging to, or appropriated to the use of the said church, and all arrears of money or tobacco arising from former assessments; and that there should be reserved to such parishes as have

received private donations, for the support of the said church and its ministers, the perpetual benefit of such donations.[95]

These resolutions were duly transmitted to the state Senate December 5, and the great battle for religious freedom in the commonwealth was on.

Further Exemptions for Dissenters. On December 5, 1776, an Act was also passed by the Assembly repealing the laws making it an offense to hold any particular religious opinions, and removing penalties against those who did not attend the services of the Established Church or who worshiped elsewhere.[96] This Act exempted dissenters from contributing to the support of the Church, but left it in possession of the wealth it had acquired by taxation.[97] The Act is so important that we quote here the major portion:

We the General Assembly do enact: That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.[98]

Jefferson's views of the significance of what the General Assembly had accomplished in this session are important, since he provided so much of the thought and momentum for the religious-freedom movement.

... We prevailed so far only as to repeal the laws which rendered criminal the maintenance of any religious opinions, the forbearance of repairing to church, or the exercise of any mode of worship; and further, to exempt dissenters from contributions to the support of the Established Church and to suspend, only until the next session, levies on the members of that church for the salaries of their own incumbents. For although the majority of our citizens were Dissenters, as has been observed, a majority of the legislature were Churchmen. Among these, however, were some reasonable and liberal men, who enabled us, on some points, to obtain feeble majorities. But our opponents carried, on the general resolutions of the Committee of November 19, a declaration that religious assemblies ought to be regulated and that provision ought to be made for continuing the succession of the Clergy, and superintending their conduct. And in the bill now passed was inserted an express reservation of the question, whether a general assessment should not be established by law, on every one, to the support of the pastor of his Choice or whether all should be left to voluntary contributions.[99]

As Jefferson stated, the question of the general assessment was deferred, but the levy for the support of the Anglican ministers was suspended for the year —a highly important decision. Eckenrode, who has given this important and involved question thorough study, believes that the Establishment was really

destroyed on January 1, 1777, when the act of 1776 suspending the payment of tithes became effective.

The act of 1776 was intended as both a final and a temporary measure. It was final in supplementing the work of the Bill of Rights and exempting dissenters from the support of the Anglican Church; temporary in suspending the tithes paid by members of that church. But in freeing almost half of the taxpayers from the burden of the state religion, the state religion was at an end. Nobody could be forced to support it, and an attempt to levy tithes upon Anglicans alone would be to recruit the ranks of dissent. In only one way could an establishment be continued and that was by taxing all citizens for the general support of religion. The attempt to do this, in the conservative reaction at the end of the war, failed, thus prostrating the last hope. The fact remains that no taxes for religious purposes were ever paid in Virginia after January 1, 1777.[100]

Some think, however, that final disestablishment should be dated a few years later, as the assessment issue was raised again in later years and was only finally killed by the legislature in October, 1785.

When Jefferson was no longer in the House, after he had become governor, the progressive group directed in 1779 that a bill for religious freedom should be introduced, and that by way of compensation a bill should also be brought in to save the property of the Church heretofore by law established. Both measures had the support of George Mason, but neither was enacted at this time; as the compromise proposal was considered something of an unholy alliance, and the latter part of it was entirely unacceptable to the Baptists and other radical elements, including Jefferson's closest followers, who were opposed to any Church-State connection.

Salary Payments of Clergymen. The payment of salaries to Episcopal clergymen as a matter of general state authorization, suspended from year to year since 1776 at the urging of Baptists, Presbyterians, and many statesmen, was finally discontinued by legislative action in 1779.[101] George Mason played a large part in securing this result, but the legislation did not affect the clergy's retention of their glebe lands or their virtual monopoly of marriage fees.

Right of all Ministers to Perform Marriages. In 1780 the Assembly broadened the powers of the dissenting ministers by enacting "That it shall and may be lawful for any minister of any society or congregation of Christians to celebrate the rites of matrimony, and such marriage, as well as those hereafter celebrated by dissenting ministers, shall be and are hereby declared good and valid in law."[102]

There was, however, still a distinction in that the Episcopal clergy as such were authorized to celebrate marriages without any special license, while dis-

senters had to obtain a license and were restricted to certain areas. It was not until 1784 that the ministers of all denominations were placed on an absolutely equal basis as far as the celebration of marriages was concerned.

It was at this period that Jefferson, in his *Notes on Virginia*, written in 1781–82, said in reference to religion in the state:

> . . . It is error alone which needs the support of government. Truth can stand by itself. Subject opinion to coercion: whom will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons. And why subject it to coercion? To produce uniformity. But is uniformity of opinion desirable? No more than of face and stature. Introduce the bed of Procrustes then, and as there is danger that the large men may beat the small, make us all of a size, by lopping the former and stretching the latter. Difference of opinion is advantageous in religion. The several sects perform the office of a *censor morum*.
>
> Our sister States of Pennsylvania and New York, however, have long subsisted without any establishment at all. The experiment was new and doubtful when they made it. It has answered beyond conception. They flourish infinitely. Religion is well supported; of various kinds, indeed, but all good enough; all sufficient to preserve peace and order; or if a sect arises, whose tenets would subvert morals, good sense has fair play, and reasons and laughs it out of doors, without suffering the State to be troubled with it. They do not hang more malefactors than we do. They are not more disturbed with religious dissensions. On the contrary, their harmony is unparalleled, and can be ascribed to nothing but their unbounded tolerance, because there is no other circumstance in which they differ from every nation on earth. They have made the happy discovery, that the way to silence religious disputes, is to take no notice of them. Let us too give this experiment fair play, and get rid, while we may, of those tyrannical laws. . . .[103]

Act Incorporating the Episcopal Church. The Incorporation Act was passed in December, 1784, whereas the general assessment bill was not finally killed until ten months later, hence we deal with the Act before the bill, which had been the first to be agitated. As a matter of fact, both measures were much discussed in the 1784 session of the Assembly, and were so frequently bracketed together that Eckenrode entitles the fifth chapter of his *Separation of Church and State in Virginia* "Assessment and Incorporation." The question of incorporation came to a head in June, when the Episcopal Church, meeting in convention in Richmond, drew up a memorial asking the legislature of the commonwealth to grant it an act of incorporation so as to adjust itself to the new conditions which statehood had brought about. The memorial, which assumes, eight years after the epoch-making events of 1776, that the state Assembly still has the right to determine church regulations, clearly states the changed situation due to the break with England. The Revolution had made changes

necessary in the government and liturgy of the Church. Specifically the memorial requested the repeal of that part of the old Act regarding the induction of ministers which stated that

No minister be admitted to officiate in any parish church except such as present ordination from some English bishop and shall subscribe to orders of the Church of England. And that being by the late happy revolution, loosed from those obligations which bound us to our former spiritual as well as temporal rulers, we wish to be indulged also with the liberty of introducing into our church a system or order and government suited to our religious principles—or directing a form of public worship hereafter to be used in the Episcopal Churches within this Commonwealth and of regulating all the spiritual concerns of that Church.

Consequently an act was asked which would give the Episcopal clergy the power to regulate the spiritual concerns of the Church, alter forms, institute canons, and make rules for its government.[104] This was the type of change which the Episcopal Church, formerly "by law established" in most of the Southern states, faced in this period of readjustment following the Revolution. It meant many temporary difficulties and hardships, but, as we shall see, was to prove a great blessing to all concerned.

In its original form the bill granted such extensive powers to the clergy that the Presbyterians and other religious groups, as well as some Episcopal laymen, were greatly disturbed, fearing that it would result in making them a separate caste. But the bill was altered to meet this criticism. Madison explained the situation.

The Episcopal Clergy [he wrote] introduced a notable project for re-establishing their independence of the laity. The foundation of it was that the whole body should be legally incorporated, invested with the present property of the Church, made capable of acquiring indefinitely—empowered to make canons & bye-laws not contrary to the laws of the land, and incumbents when once chosen by vestries, to be immovable otherwise than by sentence of the convocation. Extraordinary as such a project was, it was preserved from a dishonorable death by the talents of Mr. Henry.[105]

Eckenrode, quoting from the *Journal of the House of Delegates,* gives a good summary of the new legislation.

The bill "for incorporating the Protestant Episcopal Church gave the ministers and vestries of the respective parishes a title to the churches, glebes and other property, and outlined a method for the election of vestrymen, who were restricted to membership in the Episcopal church. Vestries were required to make an inventory of property in their charge to the county courts once in three years. Cases in which the revenue of parishes exceeded £800 were to be referred to the Assembly. All former laws in regard to the church were repealed and it was left to

regulate its own concerns, subject to the provision that the regulation should be conducted in conventions consisting of two delegates from each parish, "whereof the minister shall always be one." The convention was empowered to remove unworthy ministers, and vestries were authorized to collect arrearages of the poor levies. This bill when it became an act may be said to have completed disestablishment, because the title to ecclesiastical property was vested in the church authorities, and those authorities were empowered to regulate church affairs without legislative interference. And yet at the same time, the civil authority maintained a certain hold on the church in requiring the making of reports to the courts, and in enacting certain rules for the conduct of external affairs. By the terms of the incorporation bill, separation of church and state was not entirely complete.[106]

On the whole, the bill seemed to commend itself to most thoughtful people as a reasonably satisfactory temporary *modus vivendi*. Only one petition from any religious group opposed it—that of the Hanover Presbytery—and its principal objection was that it permitted the Episcopal Church to retain all its property at least for the time being. It passed the Committee of the Whole, December 22, 1784, an historic date, by a vote of 47 to 38, this majority being due largely to the support of Madison. He voted for it with some reluctance as a temporary measure and to prevent assessment, which he rightly considered a much more serious danger. He wrote:

> The necessity of some sort of incorporation for the purpose of holding & managing the property of the church could not well be denied, nor a more harmless modification of it now obtained. A negative of the bill, too, would have doubled the eagerness and the pretexts for a much greater evil, a general Assessment, which, there is good ground to believe, was parried by this partial gratification of its warmest votaries.[107]

The bill remained in force only a few years. It was not until 1802, after its repeal, that all the churches of the commonwealth were placed on the same basis.[108]

The newly incorporated Protestant Episcopal Church in Virginia held its convention in Richmond May 18, 1785. Its satisfaction over the legal recognition of incorporation did not prevent many of its leaders from being saddened over the various steps that had been taken after disestablishment toward giving other religious bodies the same general status. The general financial condition in the state following the long struggle of the Revolutionary War added to the worry and anxiety. All these factors were reflected in an address which the convention issued. Here is a characteristic passage:

> Of what is the church now possessed! Nothing but the glebes and your affections. Since the year 1776, she hath been even without regular government, and her ministers have received but little compensation for their services. Their numbers are

diminished by death and other causes, and we have as yet no resource within ourselves for a succession of ministers. Churches stand in need of repair, and there is no fund equal to the smallest want.[109]

But in spite of these discouragements and the forthcoming repeal of the Incorporation Act (1787) and loss of the glebes, the Church soon recovered, and within a quarter of a century, supporting and governing itself without any state aid or favoritism, it became a much more vital moral and religious force than it had ever been in the past.

Defeat of General Assessment for Support of Religion. The decision of this important question, on which there was much difference of opinion among thoughtful Christian statesmen, including those who favored the general principle of religious liberty, was deferred, by Article VI of the Preliminary Act for Religious Freedom adopted in 1776, to the determination of a future Assembly. The plan, which involved the support of Christianity by dividing certain taxes among the well-established denominations, without any State Church, was in general advocated by Episcopalians and Methodists, and by many Presbyterians, but was denounced by the Baptists.

The assessment proposals took slightly different forms at different times, but these two paragraphs from the bill of 1779 may be taken as representing the major purpose and scope of the proposed legislation:

For the encouragement of Religion and virtue, and for removing all restraints on the mind in its inquiries after truth, Be it enacted by the General Assembly, that all persons and Religious Societies who acknowledge that there is one God, and a future State of rewards and punishments, and that God ought to be publickly worshiped, shall be freely tolerated.

The Christian Religion shall in all times coming be deemed and held to be the established Religion of this Commonwealth; and all Denominations of Christians demeaning themselves peaceably and faithfully, shall enjoy equal privileges, civil and Religious.[110]

In 1783–84 this perennial question was again much to the fore. A petition from Lunenburg in 1783 clearly stated the views of those who supported the general-assessment proposal:

The humble petition and remonstrance of all Sects and Denominations of Christians within the State: sheweth That soon after the Declaration of Independency the General Assembly, with a view to the promotion of religious Liberty and free Toleration, thought proper, by Act to suspend the collection and payment of the salaries formerly allowed by Law to Inducted ministers of the Gospel: whereby all the Citizens of the state became emancipated & free from contributions to any Church revenue.

That from that period we have with pain and regrett, seen the propogation of the

Gospel die away in many parts of the country; and its diligent and faithful Ministers neglected; through a want of that Holy zeal in their adherents as Christians to support their respective Churches with the Dignity becoming their profession: and public Virtue as Citizens, to propogate and cherish the Sacred test of truth; as a necessary and indespensable branch of Civil Government.

That the indifference and impiety of those who are careless of their own Salvation, and equally deaf and negligent to all religions; must greatly encrease the burdens of the people of God who would wish to support the Cause of Christianity, (as they have done that of freedom) even with their last mite.

That Confined to Christianity alone; we wish for the establishment of a free and universal Toleration Subject to the Constitution; we would have no Sect or Denomination of Christians privileged to encroach upon the rights of another. For the accomplishment of these desirable purposes we wish to see the reform'd Christian religion supported and maintained by a General and equal contribution of the whole State upon the most equitable footing that is possible to place it. . . .[111]

The question, after this long agitation, came to a head in the session of the General Assembly in 1784–85, when James Madison, at the suggestion of George Mason and George Nicholas (1754?–99), drew up the well-known "Memorial and Remonstrance Against Religious Assessments,"[112] taking the ground that payments from the public treasury to the different denominations was inconsistent with the principle of religious freedom. On the other hand, the proposal was urged in the interest of religion by Patrick Henry. He was encouraged by memorials from various conservative constituencies which felt that the cause of Christianity would suffer if the state gave it no financial aid. The first memorial was from the Isle of Wight. It was read on November 4, and really provided the spark for the debate on the question. It stated

that they are much concerned to see the countenance of the civil power wholly withdrawn from religion, and the people left without the smallest coercion to contribute to its support; that they consider it as the duty of a wise Legislature to encourage its progress, and diffuse its influence; that being thoroughly convinced that the prosperity and happiness of this country essentially depends on the progress of religion, they beg leave to call the attention of the Legislature to a principle, old as society itself, that whatever is to conduce equally to the advantage of all, should be borne equally by all, and praying that an act may pass to compel every one to contribute something, in proportion to his property, to the support of religion.[113]

A few days later another local petition came which also reflected a strong public sentiment favoring assessment. Here are some of its main conclusions:

that your Petitioners have with much concern observed a general Declension of Religion for a number of Years past, occasioned in Part, we conceive by the late war, but chiefly by its not being duly aided and patronized by the civil Power; that should it

decline with nearly the same rapidity in Future, your Petitioners apprehend Consequences dangerous, if not fatal to the Strength and Stability of Civil Government. * * * Were all Sense of Religion rooted out of the Minds of Men, scarce any thing would be left on which human Laws would take hold. * * * Your Petitioners therefore think that those who legislate, not only have a Right, founded upon the principle of public utility, but as they wish to promote the Virtue and Happiness of their Constituents & the good People of the State in general; as they wish well to the Strength and Stability of Government, they ought to aid & patronize Religion. . . . As every Man in the State partakes of the Blessings of Peace and Order, which results no less from religion than the operation of the laws, so every Man should be obliged to contribute as well to the Support of Religion, as that of Civil Government nor has he any Reason to complain of this, as an Encroachment upon his religious Liberty, if he is permitted to worship God according to the Dictates of his Conscience.[114]

Such petitions strengthened Henry's hand in his determination to secure the passage of the religious assessment bill. He advanced as his chief argument the close relation of religion to the prosperity of the state, calling attention to the fate of nations which had neglected religion, and inferring the need of state support. Madison exposed this fallacy, stating that the true question was "not is Religion necessary,—but are Religious Establishments necessary for Religion?" He answered this fundamental question boldly in the negative, naming as examples the States in which religion was not established.[115] He held that religion was corrupted when established by law, and that establishments contributed to the downfall of States. The cure for declining religion and morals, which had followed in the footsteps of war, was not an established Church but rather reliance on such matters as laws to cherish virtue, a better administration, the education of youth, and personal example.[116]

The House resolution designed to carry out Henry's plan provided:

That the people of this Commonwealth, according to their respective abilities, ought to pay a moderate tax or contribution annually, for the support of the Christian religion, or of some Christian church, denomination or communion of Christians, or of some form of Christian worship.[117]

This resolution was adopted November 11, 1784, by a good majority, after a highly significant debate; but in spite of the fact that Henry was chairman of the committee which drafted the bill, Madison, by an effective speech,[118] secured postponement of the third and final reading. The assessment bill would almost undoubtedly have become law had not its leading proponent, Patrick Henry, been elected governor on November 17, and had not Madison shown great determination and resourcefulness in opposing it.

Writing to James Monroe two weeks after the original action, Beverley Randolph described the bill as one by whose letter "Turks, Jews and infidels were

to contribute to the support of a Religion whose truths they did not acknowledge."[119] This was essentially true, because in a session of the Committee of the Whole the word "Christian" was added to the word "religion," which had been used in the above resolution without special designation so as to provide for non-Christians who supported some form of worship. This change was made by a small majority, and in its final form the bill passed the House December 23, by a vote of 44 to 42.[120]

Madison's correspondence shows the attitude of the leading denominations on the subject of the debate. On November 14, 1784, he wrote to Monroe: "The Presbyterian Clergy have remonstrated agst any narrow principles, but indirectly favor a more comprehensive establisht."[121] Again on April 12, 1785, he wrote to the same correspondent that

> The Episcopal people are generally for it (assessment) though I think the zeal of some of them has cooled. The laity of the other sects are generally unanimous on the other side. So are all the Clergy, except the Presbyterians who seem as ready to set up an establishment which is to take them in as they were to pull down that which shut them out. I do not know a more shameful contrast than might be found between their memorials on the latter and former occasion.[122]

It is clear that most Protestants in Virginia at the time favored the encouragement of religion by the state through financial aid to the Christian churches. Even John Marshall and George Washington were among the influential statesmen who were not opposed to some proposal of this character. Mason sent Washington a copy of Madison's "Remonstrance," hoping to get his support in opposing the proposal as opposed to religious freedom. In his reply Washington said:

> Although no man's sentiments are more opposed to any kind of restraint upon religious principles than mine are, yet I must confess, that I am not amongst the number of those, who are so much alarmed at the thoughts of making people pay towards the support of that which they profess, if of the denomination of Christians, or declare themselves Jews, Mahometans, or otherwise, and thereby obtain proper relief. As the matter now stands, I wish an assessment had never been agitated, and as it has gone so far, that the bill could die an easy death; because I think it will be productive of more quiet to the State, than by enacting it into a law, which in my opinion would be impolitic admitting there is a decided majority for it, to the disquiet of a respectable minority. In the former case, the matter will soon subside; in the latter, it will rankle and perhaps convulse the State.[123]

Edmund Randolph (1753–1813), Richard Henry Lee (1732–94), and some other statesmen also held similar views, or supported Patrick Henry, but the effect of postponing action until the next session gave the "Remonstrance,"

which was widely distributed in June and July, 1785, the time to be carefully considered by the electorate, with the result that the assessment plan was killed by the legislature in October.

Madison's remarkable paper was mainly responsible for this result, and it must be considered one of the truly epoch-making documents in the history of American Church–State separation; as impressive and convincing today as it was over a century and a half ago. It is considered at some length where Madison is described as a hero of religious freedom.[124] Here suffice it to say that he emphasized the inborn right of every man to follow his own conscience in religious matters, and held that religion is exempt from the cognizance of civil authority.

> Who does not see that . . . the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever.[125]

The logic was irresistible, the argument irrefutable; and both were to have a profound influence on American thought and practice.

Some of the dissenting churches, such as the Baptist and Presbyterian, aided the political liberals in securing this result. For instance, the Presbyterian Church in Virginia, at a general assembly held in August, 1785, adopted a strong memorial against it,[126] specifically referring to the fact that it would be unfair to the Jews, as it provided for only one religion, Christianity.[127] Even more significant was the action of the Baptists. Their General Association, meeting at Orange on September 7, 1785, adopted a remonstrance: First, to the effect that the civil power had no right to establish a religious tax; second, that the fear that religion would die without state support is "founded neither in Scripture, on Reason, on Sound Policy; but is repugnant to each of them"; third, that as the Assembly must be the judge as to the recipients of the tax, it would determine religious principles; fourth, that the Assembly which established all sects had the power to establish one; fifth, that the incorporation of the Episcopal Church was inconsistent with human freedom; sixth, that the reservation of the ecclesiastical property was a glaring distinction; seventh, that the indulgence granted Quakers and Mennonites was an "open offense." The August declaration of the Baptists had opposed assessment; the September resolutions went further, opposing both assessment and incorporation. The Baptists were the strongest opponents of both measures.[128]

Such petitions as these from responsible religious bodies more than overcame the memorials from various communities which had earlier supported assessment. Other features also aided the defeat of the plan: the fear of extra taxation; the feeling that it was inconsistent with the principle of separation of

Church and State; the removal of Henry from the Assembly to the governorship; and, supremely, the masterly leadership of Madison.

As we look back now after the experience of a century and a half we can clearly see that the defeat of the general assessment was definitely in the interest not only of religious freedom but also of both Church and State in this country. In this case, as in many others, Madison and Mason showed themselves wise statesmen for a commonwealth in a democratic republic.

(5) THE RESULTING BILL FOR ESTABLISHING RELIGIOUS FREEDOM (1785–86), AND THE AFTERMATH

The Bill for Establishing Religious Freedom was adopted by the Assembly in 1785 and became a law January 16, 1786.

The bill is so important in determining Church–State relations in the United States that it seems necessary to print it in full. It had been prepared by Thomas Jefferson and originally introduced into the Virginia Assembly June 13, 1779. It was laid over from session to session and was not finally enacted until late in 1785. Although Jefferson is almost entirely responsible for its composition, James Madison[129] was the most potent force in securing its adoption. He was, however, much aided by the sympathetic interest of Zachariah Johnston (1742–1800), chairman of the Committee on Religion of the House of Delegates. It was passed by a vote of 67 to 20 in the House over the opposition of an influential group led by Patrick Henry, who, as we have seen, had proposed the assessment plan for the support of the Christian religion. As is well known, Jefferson rightly considered his bill so important that on his tomb at Monticello he included it among the three achievements of his life that he most wished commemorated.[130]

The bill is printed in full below, the portions given in italics being struck out by the legislature. It will be noted that the Assembly made no alterations other than omissions, except for the slight additions in square brackets, the change of the word "temporary" to "temporal," "powers" to "the power," and modifying the form of enactment as indicated in the footnote. These minor changes are all marked by asterisks.

A BILL FOR ESTABLISHING RELIGIOUS FREEDOM

* Well aware *that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds;* that Almighty God hath created the mind free, *and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint;* that all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget

* Hening, *Statutes at Large*, XII, 84, begins "Whereas Almighty God."

habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, *but to extend its influence on reason alone;* that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves *and abhors, is* sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary* rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions, *any* more than our opinions in physics or geometry; that, therefore, the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity, of being called to [the]* offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow-citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; *that the opinions of men are not the object of civil government, nor under its jurisdiction;* that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles, on [the]* supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

We, the General Assembly, do enact, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and

by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or effect their civil capacities.

And though we know well that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with *power[s]** equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.[131]

Jefferson, in his *Autobiography,* writing under date of January 6, 1821, gives some recollections regarding the passage of this memorable bill:

The bill for establishing religious freedom, the principles of which had, to a certain degree, been enacted before, I had drawn in all the latitude of reason & right. It still met with opposition; but, with some mutilations in the preamble, it was finally passed; and a singular proposition proved that it's protection of opinion was meant to be universal. Where the preamble declares that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed, by inserting the word "Jesus Christ," so that it should read "a departure from the plan of Jesus Christ, the holy author of our religion" the insertion was rejected by a great majority, in proof that they meant to comprehend, within the mantle of it's protection, the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination.[132]

This bill, translated into French and Italian, had a wide influence on public opinion and legislation in some parts of Europe. Furthermore, owing to the political leadership of Virginia at this formative period in our history, and the high standing of her statesmen in the Federal Constitutional Convention, the document had a very great influence on establishing religious freedom in this country.

Following this bill, and in keeping with its provisions and spirit, three other legislative actions were taken; and, in addition, an important court decision was handed down.

In 1787 the law incorporating the Episcopal Church was repealed.[133] This left all Churches on the same legal basis. They were now equally free to conduct their own affairs without legislative interference.

In 1793 the Virginia Court of Appeals decided that the Bill of Rights adopted by the state prior to the Revolution was a part of the constitution and that all laws contrary to it were null and void.[134] This relieved the minds of those who feared lest reference to "vestries" and "dissenters" in early legislation might result in the Episcopal Church again becoming entrenched.

In 1798–99 the legislature, confirming this action, passed an act to repeal every law in seeming contravention of the Bill of Rights, the Constitution, and

the Bill for Religious Freedom. This did away with all laws made for the special benefit of any religious society, and settled everything except the matter of glebe lands given to the Church of England prior to the Revolution.

The resolution, reported January 5, 1798, read:

> Whereas the constitution of the state of Virginia, hath pronounced the government of the King of England to have been totally dissolved by the revolution; hath substituted in place of the civil government so dissolved, a new civil government, and hath in the bill of rights excepted from the powers given to the substituted government the power of revising any species of ecclesiastical or church government in lieu of that so dissolved, by referring the subject of religion to conscience:
>
> Resolved therefore, That the several laws—the acts exempting dissenters from supporting the establishment; repealing the act for the support of the clergy; the incorporation act; the act authorizing the election of vestries; the act repealing the incorporation act; the act giving powers to trustees—ought to be repealed, as violating the principles of the constitution, and being inconsistent with religious freedom; and that the law intituled, An act for establishing religious freedom, ought to be declared to derive its obligation from its being a true exposition of the principles of the bill of rights and constitution.[135]

The conservatives offered an amendment to the effect "That whether the said religious society denominated the Protestant Episcopal church, under the words or principles of our constitution, be entitled to hold the said property [glebe lands] or not, is a question of judicial and not of legislative decision." This was voted down, 52 to 99. An effort was made to strike out of the resolution the line "as violating the principles of the constitution and being inconsistent with religious freedom," but it also failed. The original resolution then passed by a vote of 97 to 51. Eckenrode in reporting the action says: "The radical party had consequently won the day on the glebe question. The radical interpretation of the Bill of Rights as completely severing the connection of church and state, first put forward by the dissenters during the war, now received legislative sanction."[136]

On January 20, 1802, the Virginia Assembly took final action. The vacant glebes of the Episcopal parishes, and those that would become vacant by the death of the incumbent, were ordered to be sold by the Overseers of the Poor, who were to use the receipts, after paying parish debts, for the support of the poor or for any other nonreligious purpose which a majority of the voters might decide.[137] The incumbents were not disturbed. Private donations made to Anglican parishes prior to 1777 were not to be sold, when "there is any person in being entitled to take the same under any private donor,"[138] and similarly property obtained since 1777 was to be left as it was.

So the Episcopal churches merely retained their church buildings and grounds

immediately about them, as well as certain privately given or acquired donations. The matter was long before the courts owing to the contest made by the Episcopal Church, and it was not until 1840 that the state Court of Appeals unanimously sustained the act of 1802. As a historian of Virginia says: "Not until then was the divorce between Church and State in Virginia complete."[139]

This last action, that of removing the glebe lands from the possession of the Episcopal Church, was the most doubtful of the various acts of the Assembly taken in the laudable effort to separate Church and State. It can be understood only as it is remembered that the former dissenting groups, and especially the Baptists, held that as these lands had been granted by the state—that is, the colony of Virginia—and did not represent freewill offerings, they were the fruit of public taxation and should revert to the state. Only in this way, it was thought, could the unfair results of former favoritism shown by the state to a single denomination be done away with. It probably would have been better if these cases had been left to court adjudication, rather than to legislative action, but the temper of the time, which was a radical one, did not permit this.

And so Virginia won religious freedom for herself, and indirectly for the whole country, because of the influence of her action on other states and on the Federal government. Her victory was due primarily to the efforts of five men whose special contributions to the separation of Church and State and the cause of religious freedom have been discussed in a previous chapter[140]—the Reverend Samuel Davies, George Mason, Thomas Jefferson, James Madison, and the Reverend John Leland, names which should always be held in high honor.

As Madison was, with Jefferson and Mason, the American statesman who had given the most thought and study to the problem of religious freedom, and the one most responsible for the path-breaking constitutional and legal changes adopted in Virginia, his reasoned views as the battle drew to an end deserve quoting. Writing in 1823 to Edward Everett of Massachusetts, he said:

> The difficulty of reconciling the Christian mind to the absence of a religious tuition from a University established by law, and at the common expense, is probably less with us than with you. The settled opinion here is that religion is essentially distinct from civil Government, and exempt from its cognizance; that a connextion between them is injurious to both; that there are causes in the human breast which ensure the perpetuity of religion without the aid of the law; that rival sects, with equal rights, exercise mutual censorships in favor of good morals; that if new sects arise with absurd opinions or over-heated imaginations, the proper remedies lie in time, forbearance, and example; that a legal establishment of religon without a toleration could not be thought of, and with a toleration, is no security for public quiet and harmony, but rather a source itself of discord and animosity; and, finally, that these opinions are

supported by experience, which has shewn that every relaxation of the alliance between law and religion, from the partial example of Holland to its consummation in Pennsylvania, Delaware, New Jersey, etc., has been found as safe in practice as it is sound in theory. Prior to the Revolution, the Episcopal Church was established by law in this State. On the Declaration of Independence it was left, with all other sects, to a self-support. And no doubt exists that there is much more religion among us now than there ever was before the change, and particularly in the sect which enjoyed the legal patronage. This proves rather more than that the law is not necessary to the support of religion.[141]

Section 4. THE SECOND VICTORY—NORTH CAROLINA (DECEMBER 18, 1776)

We come now to North Carolina, which in the Revolutionary period was preceded only by Virginia in separating Church and State. The early history of the colony, as far as Church–State relations are concerned, is particularly interesting.

The earliest charter of the original province of Carolina, that of 1663, assumes that the Church of England will be the specially recognized religion and that its churches and chapels will be "dedicated and consecrated according to the ecclesiastical laws of our kingdom of England,"[142] but it provides that

because it may happen that some of the people and inhabitants of the said province, cannot in their private opinions, conform to the publick exercise of religion, according to the liturgy, form and ceremonies of the church of England, or take and subscribe the oaths and articles, made and established in that behalf, and for that the same, by reason of the remote distances of these places, will, we hope be no breach of the unity and uniformity established in this nation; our will and pleasure therefore is, and we do by these presents, for us, our heirs and successors, give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and free license, liberty and authority, by such legal ways and means as they shall think fit, to give and grant unto such person or persons, inhabiting and being within the said province, or any part thereof, who really in their judgments, and for conscience sake, cannot or shall not conform to the said liturgy and ceremonies, and take and subscribe the oaths and articles aforesaid, or any of them, such indulgencies and dispensations in that behalf, for and during such time and times, and with such limitations and restrictions as they, . . . their heirs or assigns, shall in their discretion think fit and reasonable; and with this express proviso, and limitation also, that such person and persons, to whom such indulgencies and dispensations shall be granted as aforesaid, do and shall from time to time declare and continue, all fidelity, loyalty and obedience to us, our heirs and successors, and be subject and obedient to all other the laws, ordinances, and constitutions of the said

province, in all matters whatsoever, as well ecclesiastical as civil, and do not in any wise disturb the peace and safety thereof, or scandalize or reproach the said liturgy, forms and ceremonies, or anything relating thereunto, or any person or persons whatsoever, for or in respect of his or their use or exercise thereof, or his or their obedience and conformity, thereunto.[148]

In other words, if settlers had any religious scruples about conforming to the Church of England and yet would not interfere with its regular work and continued to be loyal citizens, they could have a large measure of toleration.

In 1669 the proprietary colony, or province of Carolina—which in 1729 was divided into North Carolina and South Carolina—adopted the "fundamental constitutions" which had been drafted by John Locke (1632–1704), somewhat revised by his patron, the Earl of Shaftesbury, one of the lords proprietors.

These constitutions were written after Locke's *Essay concerning Toleration* (1666), but prior to the publishing of his three *Letters on Toleration* (1689, 1690, 1692) and his *Two Treatises on Government* (1690), which had such a profound influence on early American political thought.

The constitutions were put only partially into operation, and were abrogated by the lords proprietors in 1693. The all-important sections for our purpose are sections ninety-five to one hundred and nine, which provided for a degree of toleration little known at the time in the American colonies outside of Rhode Island. It will be noticed that section ninety-six, which seems out of harmony with the others, is placed in brackets because it was not drawn up by Locke, and its inclusion was against his judgment, as we know from the philosopher himself.[144]

Ninety-five. No man shall be permitted to be a freeman of Carolina, or to have any estate or habitation within it, that doth not acknowledge a God; and that God is publicly and solemnly to be worshipped.

Niney-six. [As the country comes to be sufficiently planted and distributed into fit divisions, it shall belong to the parliament to take care for the building of churches, and the public maintenance of divines, to be employed in the exercise of religion, according to the Church of England; which being the only true and orthodox, and the national religion of all the King's dominions, is so also of Carolina; and, therefore, it alone shall be allowed to receive public maintenance, by grant of parliament.]

Ninety-seven. But since the natives of that place, who will be concerned in our plantation, are utterly strangers to Christianity, whose idolatry, ignorance, or mistake gives us no right to expel or use them ill; and those who remove from other parts to plant there will unavoidably be of different opinions concerning matters of religion, the liberty whereof they will expect to have allowed them, and it will not be reasonable for us, on this account, to keep them out, that civil peace may be maintained amidst

diversity of opinions, and our agreement and compact with all men may be duly and faithfully observed; the violation whereof, upon what pretence soever, cannot be without great offence to Almighty God, and great scandal to the true religion which we profess; and also that Jews, heathens, and other dissenters from the purity of Christian religion may not be scared and kept at a distance from it, but, by having an opportunity of acquainting themselves with the truth and reasonableness of its doctrines, and the peaceableness and inoffensiveness of its professors, may, by good usage and persuasion, and all those convincing methods of gentleness and meekness, suitable to the rules and design of the gospel, be won ever to embrace and unfeignedly receive the truth; therefore, any seven or more persons agreeing in any religion, shall constitute a church or profession, to which they shall give some name, to distinguish it from others.

Ninety-eight. The terms of admittance and communion with any church or profession shall be written in a book, and therein be subscribed by all the members of the said church or profession; which book shall be kept by the public register of the precinct wherein they reside.

Ninety-nine. The time of every one's subscription and admittance shall be dated in the said book or religious record.

One hundred. In the terms of communion of every church or profession, these following shall be three; without which no agreement or assembly of men, upon pretence of religion, shall be accounted a church or profession within these rules:

1st. "That there is a God."

II. "That God is publicly to be worshipped."

III. "That it is lawful and the duty of every man, being thereunto called by those that govern, to bear witness to truth; and that every church or profession shall, in their terms of communion, set down the external way whereby they witness a truth as in the presence of God, whether it be by laying hands on or kissing the bible, as in the Church of England, or by holding up the hand, or any other sensible way."

One hundred and one. No person above seventeen years of age shall have any benefit or protection of the law, or be capable of any place of profit or honor, who is not a member of some church or profession, having his name recorded in some one, and but one religious record at once.

One hundred and two. No person of any other church or profession shall disturb or molest any religious assembly.

One hundred and three. No person whatsoever shall speak anything in their religious assembly irreverently or seditiously of the government or governors, or of state matters.

One hundred and four. Any person subscribing the terms of communion, in the record of the said church or profession, before the precinct register, and any five members of the said church or profession, shall be thereby made a member of the said church or profession.

One hundred and five. Any person striking out his own name out of any religious

record, or his name being struck out by any officers thereunto authorized by each church or profession respectively, shall cease to be a member of that church or profession.

One hundred and six. No man shall use any reproachful, reviling, or abusive language against any religion of any church or profession; that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by engaging them in quarrels and animosities, to the hatred of the professors and that profession which otherwise they might be brought to assent to.

One hundred and seven. Since charity obliges us to wish well to the souls of all men, and religion ought to alter nothing in any man's civil estate or right, it shall be lawful for slaves, as well as others, to enter themselves, and be of what church or profession any of them shall think best, and, therefore, be as fully members as any freeman. But yet no slave shall hereby be exempted from that civil dominion his master hath over him, but be in all things in the same state and condition he was in before.

One hundred and eight. Assemblies, upon what pretence soever of religion, not observing and performing the above said rules, shall not be esteemed as churches, but unlawful meetings, and be punished as other riots.

One hundred and nine. No person whatsoever shall disturb, molest, or persecute another for his speculative opinions in religion, or his way of worship.[145]

It is interesting to note that section one hundred and ten, following these tolerant clauses, contains a statement supplementing section one hundred and seven, and authorizing absolute slavery. This appears inconsistent with most that precedes. It reads: "Every freeman of Carolina shall have absolute power and authority over his negro slaves, of what opinion or religion soever."[146]

Although the liberal provisions regarding religious toleration were not long in force, the memory of them was not entirely forgotten, and undoubtedly was a factor when it came to forming the constitution of the state.

During most of the colonial period Carolina retained an Anglican Church establishment in harmony with section ninety-six of the constitution of 1669, already quoted. But non-Anglicans were in a majority, especially in the section which became North Carolina. The process of separation was gradual, but it had a governor for its own territory from 1712 on.

In 1711 the Assembly had for the first time put Protestant dissenters on the same basis as they were in England, that is, they were granted "indulgences" as tolerated groups in spite of the Anglican Establishment. This was in keeping with the Toleration Act of 1689, which was in some respects an act of intolerance, as it merely suspended in certain cases the operation of restrictive laws remaining on the books. Such grants as it made were favors, not rights, and were largely due to the Scotch-Irish element which demanded freedom.[147] But from 1730 to 1773 the home and colonial governments of North Carolina en-

forced the objectionable Schism Act, which excluded dissenters from virtually all offices of power, dignity, or profit, even preventing them from holding positions in schools, academies, and seminaries. During most of this period dissenters in North Carolina were on the same footing as the same group in England.

Attempts to pass "An Act for Liberty of Conscience" in 1740 failed, and as late as 1762 a bill was passed providing from colony funds a salary of £133 6*s*. 8*d*. proclamation money for every Anglican clergyman, as well as fees for pubblishing bans, granting certificates of marriage, and conducting funerals. There were also provisions for a glebe on which suitable houses were to be erected, and a minister might be removed for cause by the governor, with the advice of the council. The bill of 1762 was revoked, but the objectionable features were re-enacted three years later.

In 1770 an act was finally passed allowing Presbyterian ministers the right to celebrate marriages without the payment of fees to the Episcopal minister, who was the incumbent of the parish—an act which would become law in case it received the royal assent, but this was not granted. Not until after the constitution of 1776 did dissenting clergymen have the legal right to perform marriages.[148] This was given to "all regular ministers of the Gospel of every denomination" by an act of 1778.[149]

The Anglican Church seems to have been pretty generally disliked in North Carolina in the decade prior to independence, especially as the Schism Act was enforced in the case of the Queen's Museum, Charlotte, an institution for higher education chartered by the Assembly in 1771 with an Anglican president but with the majority of fellows, trustees, and tutors, Presbyterians. It was in a Presbyterian section and intended primarily for the instruction of youth in the principles of that Church, but the king, at the suggestion of the Board of Trade, repealed the charter two years later. Presbyterians were not to be allowed to teach their own children in institutions recognized by the state.

Aside from one or two favors granted to Presbyterians and Quakers, dissenters received no official recognition until independence. There seem to have been no cases where they were elected to the council or to the governorship. They were not persecuted by being put in jail, but they had to pay tithes, suffered under muster laws, and had to undergo the disabilities of the Marriage and Schism Act, to which we have referred. But the Vestry Act of 1768, which attempted "to perpetuate an endowed Church at the expense of other denominations," expired by limitation in 1773. The Establishment was now dead, and discussions were soon in the air regarding a constitution providing for religious freedom.

Mecklenburg County, where the Scotch-Irish Presbyterians were strong, took

the lead in securing the necessary measures of relief. An Anglican clergyman, the Reverend Andrew Morton, wrote to the Society for the Propagation of the Gospel that the men of this county—which was also foremost in demanding political liberty—thought an Establishment "as oppressive as the Stamp Act."[150] When he arrived in 1766 he found the colony practically all Covenanters and Seceders, so the governor moved him to another parish.[151] In September, 1775, the county instructed its delegates to the Halifax Congress, which was to meet in 1776, to oppose "any particular church or set of clergymen being invested with power to decree rites and ceremonies and to decide any controversies of faith to be submitted to under the influence of penal laws."[152]

In November, 1775, the delegates to the so-called Halifax Congress from Mecklenburg were given even more clear-cut instructions. They were to the effect,

That in all times hereafter no professing Christian of any denomination whatever shall be compelled to pay any tax or duty toward the support of the clergy or worship of any other denomination.

That all professing Christians shall enjoy the free and undisturbed exercise of religion, and may worship God according to their consciences without restraint except idolatrous worshipers.[153]

The constitution was adopted by this "Congress," which was elected and chosen for this particular purpose, and met at Halifax from November 12, 1776, to December 18 of the same year. It begins with a Declaration of Rights containing as Article XIX: "That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences."[154]

The constitution itself has three articles that deal specifically with the problems of religion and of the churches. These are:

XXXI. That no clergyman, or preacher of the gospel, of any denomination, shall be capable of being a member of either the Senate, House of Commons, or Council of State, while he continues in the exercise of the pastoral function.

XXXII. That no person, who shall deny the being of God or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State.

XXXIV. That there shall be no establishment of any one religious church or denomination in this State, in preference to any other; neither shall any person, on any pretence whatsoever, be compelled to attend any place of worship contrary to his own faith or judgment, nor be obliged to pay, for the purchase of any glebe, or the building of any house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, or has voluntarily and personally engaged to perform; but all

persons shall be at liberty to exercise their own mode of worship:—*Provided*, That nothing herein contained shall be construed to exempt preachers of treasonable or seditious discourses, from legal trial and punishment.[155]

These provisions remained in force for about sixty years, but certain amendments were adopted at a convention in Raleigh in 1835. The only one that is important for our purposes is the alteration of the provision of Article XXXII by substituting the word "Christian" for "Protestant." This was, of course, so as to make provision for Roman Catholics.[156] It was carried by a vote of 74 to 33. The convention also omitted the clause (XXXI) regarding the incapacity of clergymen to hold office, and Article XXXIV, which was apparently considered no longer necessary, since it had become well established that no Church could legally be preferred before any other.

No further change affecting religious freedom was adopted until after the Civil War. Two or three modifications were then made in keeping with the feeling of the time. The constitution of 1868 begins with this preamble:

We, the people of the State of North Carolina, grateful to Almighty God, the sovereign ruler of nations, for the preservation of the American Union and the existence of our civil, political, and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this constitution.[157]

The Declaration of Rights includes these sections:

Section 1. That we hold it to be self-evident that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.[158]

Sec. 5. That every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and that no law or ordinance of the State in contravention or subversion thereof can have any binding force.[159]

Sec. 26. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the right of conscience.[160]

Sec. 29. A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.[161]

The constitution has a provision regarding disqualification of voters. It reads:

The following classes of persons shall be disqualified for office: first, all persons who shall deny the being of Almighty God; second, all persons who shall have been convicted of treason, perjury, or of any other infamous crime, since becoming citizens of the United States, or of corruption, or malpractice in office, unless such persons shall have been legally restored to the rights of citizenship.[162]

This clause for the first time removed all Jewish disabilities, and is looked upon by the Jews as an event of great importance, since from a strictly legal standpoint they had heretofore been denied the right to hold office, although in practice some exceptions had been allowed.[163] *The Occident,* the influential monthly Jewish periodical, edited by Rabbi Isaac Leeser (1806–68), had long advocated this change to do away with the most serious surviving legal discrimination against his race in the United States.

In keeping with the provisions of the Ordinance of 1787 for the government of the Northwest, there is this clause in Article IX regarding education: "Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools and the means of education shall forever be encouraged."[164] In Article XI is a reference to the care of the poor, unfortunate, and orphan, "being one of the first duties of a civilized and Christian state."

(1) NOTE ON THE PORTION OF NORTH CAROLINA WHICH BECAME TENNESSEE

The case of Tennessee is complicated. The land of the Watauga Association, a group of colonists from Virginia who laid its early foundations in 1772, was annexed as Washington District or Territory to North Carolina in 1776. Fearing, with some justice, that North Carolina would cede its western lands to the United States, the settlers made and formed the independent state of Frankland, the "Land of the Free," or Franklin, as it came to be called. This was in 1785–88; but soon afterward the area was returned to North Carolina. In 1790 the region was ceded to the Federal government, becoming part of "The Territory of the United States South of the Ohio," and it was governed under the Ordinance of 1787 with its guarantees of civil and religious liberty.

In 1796 it became the independent state of Tennessee and adopted a constitution. Prior to this time the state was little settled, and the region seems to have followed, in the matters of laws including those on religious matters, the general pattern of the political unit with which it was identified. When Tennessee was admitted as a state Congress made no specific requirement as to religious freedom; but the state constitution has this to say on the subject:

Article XI, Sec. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishments or modes of worship.

Sec. 4. That no religious test shall ever be required as a qualification to any office or public trust under this State.[165]

Section 5. THE SUCCESS IN NEW YORK (1777)

The New York Constitutional Convention of 1777 was, next to that of Virginia, the most important in its declarations regarding religious freedom. The committee which drafted the provisions included originally the phrase that "free toleration be forever allowed," but before adoption by the convention it was changed in conformity with the broader Virginia idea, to refer to "free exercise and enjoyment of religious profession and worship."

In the discussion John Jay (1745–1829), who never got fully over his inherited Huguenot antipathy to the Roman Catholics, proposed an amendment to the general provisions for freedom by the addition of these limiting words:

> Except the professors of the religion of the Church of Rome, who ought not to hold lands in, or be admitted to a participation of the civil rights enjoyed by the members of this State until such time as the said professors shall appear in the Supreme Court of the State, and there most solemnly swear that they verily believe in their consciences that no pope, priest, or foreign authority on earth has power to absolve the subjects of this State from their allegiance to the same; and further, that they renounce and believe to be false and wicked the dangerous and damnable doctrine that the pope, or any earthly authority, has power to absolve men from sins described in and prohibited by the holy Gospel of Jesus Christ; and particularly that no pope, priest, or foreign authority on earth has power to absolve them from the obligation of this oath.[166]

Although the convention, thanks to the opposition of Gouverneur Morris and others, by a vote of 19 to 10 declined to go as far as Jay wanted, the constitution as adopted included a significant statement in Article 38:

> And whereas we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual aggression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind, this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind: *Provided,* That the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.[167]

It was this final action declaring for the free exercise and enjoyment of religious profession and worship without discrimination that secured the high praise of President Theodore Roosevelt (1858–1919). He said:

> The convention did one most praiseworthy thing in deciding in favor of complete religious toleration. This seems natural enough now, but at that time there was hardly

a European state that practiced it. Great Britain harassed her Catholic subjects in a hundred different ways, while in France Protestants were treated far worse and in fact could scarcely be regarded as having any legal standing whatever. On no other point do the statesmen of the Revolution show to more marked advantage when compared with their European compeers than in that of complete religious toleration.[168]

The constitution of 1777 excluded from office all ministers of the gospel, as they are "by their profession, dedicated to the service of God and the care of souls, and ought not to be diverted from the great duties of their function."[169] It also abrogated all parts of the common and statute law of England and of colonial statutes and acts which "may be construed to establish or maintain any particular denomination of Christians or their ministers."[170] This action was necessary, as the Episcopalians, though a minority group in the state, were still nominally "established" in four counties, being especially strong in Westchester.

The constitutional convention also took action which was more generous and on the whole more fair than that of Virginia, in that it declared that all grants of land "or charters to bodies-politic" made by authority of the king or by his predecessors on or before October 14, 1775, were to be respected.[171] Thus the property of the different churches and of their various philanthropic and educational institutions was saved for their use.

The Episcopal Church, however, still retained certain special privileges, so in 1784 the legislature repealed all acts granting it "certain emoluments and privileges." It also required that all persons naturalized by the state should take an oath to abjure all foreign allegiance and subjection in all matters "ecclesiastical as well as civil"—a restriction aimed at the Roman Catholics which remained on the statute books for over two decades. In 1806 the test oath was abolished to permit Francis Cooper to take his seat in the Assembly—the first member of his Church to have this privilege.[172]

The constitutions of 1821 and 1846 contained the usual guarantees of religious freedom in satisfactory form.[173]

There is in New York an interesting survival from the early days of the republic of religious associations with the state, especially showing the belief that our political liberties are based upon the Divine Will. How far the practice extends beyond the Empire State I do not know, but it is still in use in its surrogates' courts, where the writs of citation begin with the words "The People of the State of New York; by the grace of God free and independent." There seems to be no statutory provision for this particular form, but there is evidence that it goes back to early days. A scholar who has been good enough to look the matter up for me says that he has found many post-Revolutionary uses of it, especially in Westchester County. It seems to have had its origin in the fact

that in colonial times all legal processes were required to be in the name of the king. Consequently county, town, and village courts of the colonial period were accustomed to use some such opening formula in indentures and similar documents as "George, by grace of God, King," etc. About the time of the American Revolution, and particularly after the promulgation of the Declaration of Independence, as it was necessary to have some designation to take the place of the king's name, "the People of the State" were appropriately substituted as being the ultimate source of authority, and the closing words of the formula took on several slightly varying forms, such as "by grace of God, free and independent," or "by right, free and independent." In such forms it was widely used on legal documents. It seemed appropriate, especially in view of the fact that the Declaration of Independence and the preambles of the constitutions of so many states used very similar statements. For instance, the words "We, the People of ———, grateful to Almighty God for our Liberties," or some close approximation, appear in the constitutions of California, Connecticut, Louisiana, South Carolina, and many other states, while still others have some such phrase as "We, the People of ———, invoking the favor and guidance of Almighty God." Apparently the use did not long persist after the Revolutionary period except in the form of writs of citation, but even as such it is an interesting survival which may be noticed in any issue of the *New York Law Journal*.[174]

It is possible that as wills were originally probated in England in ecclesiastical courts, which looked after testamentary matters, the legal religious phraseology has survived longer in the surrogates' courts than elsewhere in this country. As there were no bishops in America prior to the close of the Revolution, and consequently no regular "courts Christian," it became customary in the letters patent appointing a governor to name him the ordinary to attend to such matters. He worked through a "surrogate," the regular name for a deputy ecclesiastical judge. In this connection the following definition and explanation of one use of the word from *Webster's New International Dictionary* is illuminating:

> In the State of New York and some other states of the United States, a judicial officer who has jurisdiction over the probate of wills and testaments and the settlement of estates, and often has power to appoint and supervise guardians of infants and of other incompetent persons. The use of *surrogate* in this sense arose from the fact that these matters were formerly under ecclesiastical jurisdiction and were managed by the surrogates of the bishops.

In most states the old duties of the surrogate's court are attended to by courts of probate.

Section 6. THE BITTER STRUGGLE IN CONNECTICUT

The Church-State struggle in Connecticut is one of the most dramatic and interesting in the American national period. The state inherited from the colony an Established Church; and as a result, though the persecution of previous days had passed, a writer, boldly attacking the system in 1767, just before the outbreak of the Revolution, stated that "the ecclesiastical Laws of this Colony deny Liberty of Conscience."[175] It seems almost impossible, when we consider the situation in the state today, to realize that about a century and a quarter ago there was still a State Church, Congregational, which had certain exclusive privileges as a religious body and was closely bound up with the political fortunes of the commonwealth. The history falls naturally into four sections, namely:

(1) The Standing Order and the Status Quo in 1800
(2) The Dissenting and Radical Groups
(3) The Beginning of Toleration
(4) The Victory for Religious Freedom (1818)

The story has been effectively told by several competent historians, but for our purposes the most valuable account is that by Dr. Richard J. Purcell in *Connecticut in Transition, 1775–1818,* published by the American Historical Association and winner of its Justin Winsor Prize in American History. This work gives ample and sympathetic consideration to the various denominational issues involved.

At the close of the Revolution, and indeed until early in the nineteenth century, Connecticut had an Established Church whose social and political influence was enormous. Its ministers and the prominent laymen whom they represented were mainly responsible for the fact that Connecticut alone among the original colonies, except Rhode Island, did not create a state constitution for over forty years after the Declaration of Independence, merely continuing under the old royal charter with such legislative amendments as seemed from time to time necessary. This fact made it very much easier for the Established Church of the colonies to continue as the Established Church of the state.

(1) THE "STANDING ORDER" AND THE STATUS QUO IN 1800

The "Standing Order," that is, the established Congregational ministry, continued a dominant power in Connecticut for more than a generation after independence. It controlled the governor's council or upper house, for no one was chosen to this important body, which virtually controlled public policy, who was not a Congregationalist. Its members were generally nominated after

consultation with the leaders of the clergy, and they were almost invariably known for their strong support of the ecclesiastical status quo. They were men of character, ability, and public spirit, but were opposed to yielding the inherited prerogatives of an Established Church. The General Assembly—the lower house of the legislature—was more liberal, but with the Council intrenched in power it could accomplish relatively little. The Reverend Timothy Dwight (1752–1817), who was president of Yale College from 1795 to 1817, was frequently referred to as the Connecticut pope, and under him almost every Congregational minister of the state took his place in the maintenance of the Church-State situation. As the Congregational ministers controlled the schools and their teaching, preached all the election day sermons before the legislature, and had enormous social prestige, it was hard to bring about any reform against their will. An incident near the turn of the century speaks volumes for their influence. At the dinner on the general election day each May, when the votes for the governorship were formally counted, there was a service at the First Congregational Church in Hartford or New Haven, the joint capitals from 1701 to 1874. Four Congregational ministers took part—one giving the opening prayer, another the sermon, another the closing prayer, and still another the benediction. No non-Congregationalist was at first given one of these parts, although a few years later the prayer was occasionally assigned to an Episcopalian. At the dinner the governor and Council members sat at the first table; the Congregational clergy, often a hundred being present, sat at the second table; and the representatives in the General Assembly at the third table![176]

Prior to the Revolution some of the Congregationalists had been Whigs and some Tories, but toward the end of the eighteenth century they had "become Federalists almost to a man."[177]

To this entrenched Federalist-Congregational group Jefferson was "the man of sin." The Connecticut clergy were drawn up solidly to prevent his election in 1800; and by 1803 all dissenters, except for some Episcopalians, were members of the new Jeffersonian Republican (now Democratic) party.[178] The battle was consequently a religious-political one, with those who wished to maintain the State-Church mostly on one side, and those opposed to it almost entirely on the other. Connecticut's established ministers also became politicians in large numbers, and as politicians continued active supporters of Congregational privilege. The Republicans all over the country became interested in the Connecticut battle, even outside papers aligned with Jeffersonian Democracy joining the fray to such an extent that they helped to give the new party an anticlerical reputation, though not necessarily an antireligious one. Purcell has looked up some of the toasts given at Republican gatherings in Connecticut from 1801 to 1809. They are most suggestive: "Our brethren in Tripoli and

Connecticut—May the former be freed from Pirates and the latter from Priestcraft"; "The Clergy of all Denominations—the Bible their constitution, their politics religion"; "The Pulpit for the priest not for the politician"; "Church and State united—The cornerstone on which Satan builds his fabric of infidelity"; "Religion—We love it in its purity, but not as an engine of political delusion."[179] These seem to bear out the claim of Jeffersonians, that they were supporters of religious freedom in the interest both of Church and State, and so were opposed to any tie between organized religion and organized politics.

(2) THE DISSENTING AND RADICAL GROUPS

It may be said that dissent began in Connecticut with the conversion to Episcopacy in 1722 of Rector Timothy Cutler (1684–1765) of Yale and two of his tutors, followed by the opening of the first Connecticut Anglican Church in Stratford with the Reverend Samuel Johnson, one of these tutors, as its pastor two years later. Then came the Separatists or New Lights, who under the emotional influence of the Great Awakening in the middle of the eighteenth century, considering that the Halfway Covenant was a compromise with the world, broke away from the restrained orthodox Congregational Church. This meant that there was a cleavage in Congregationalism. The separating group was conservative theologically, but the fact that it broke away from the Established Church of Connecticut and that it had one or two leaders with convictions about the rights of conscience was significant.[180]

Later the Established Congregational Church lost many adherents to the Baptists and the Methodists, so that probably at the time of the Revolution the dissenters in Connecticut constituted about a third of the population of the state. The last two groups were particularly active in opposing the State Church. The Baptists little by little took over many of the ultraconservative seceders from orthodox Congregationalism, and they and the Methodists did an important work, both on the outskirts of the colony and among the less prominent social groups in the old centers.

The Baptists were the most active in demanding religious freedom. From 1802 to 1818, when Church and State were separated, they petitioned the legislature every year on the subject, but the Council was so conservative that it never even considered these petitions until 1815. They threw themselves heart and soul into the Jeffersonian-Republican party movement, their elders frequently offering prayers at Republican gatherings. The split of dissent from Federalism became more and more prominent, and was aided by Congregational support of the reactionary Hartford Convention of 1814–15. The efforts of the Baptists and Methodists were aided by the fact that the orthodox Congregational

churches had become somewhat dead, being influenced by deistic and other forms of radical philosophic thought, due largely to European contacts. President Dwight of Yale, in his sermons and writings from 1795 on, did much to counteract this, but the more outgiving dissenting churches, with a vital evangelical message, were extending their influence. They were demanding the extension of the suffrage, more representation in the actual government of the state, the abolition of the tax for the support of Congregationalism, and the entire separation of Church and State.

(3) THE BEGINNING OF TOLERATION

The struggle of the liberal religious forces in Connecticut against the Standing Order was greatly aided by the growing interest in the cause of the Revolution. In 1770 the legislature granted conscientious dissenters permission to worship in edifices and congregations of their own choice, and exempted the estates of their ministers from taxation; but the old requirement, to which the nonconformists in the state specially objected—that the laity pay taxes to the established Congregational Church—remained in force.[181] In 1776 the colony became a state, continuing under its distinguished colonial governor, Jonathan Trumbull, and under the old charter of 1662—the Assembly merely making such minor changes through legislative action as were necessary. The most important step in the decade after the transformation of the colony into a state was in 1784, when all reference to the Saybrook Platform as the established form of church government was omitted from the first edition of the *Laws and Acts of the State of Connecticut in America,* and the Toleration Act was adopted. This was due to the growing spirit of tolerance which came with independence from England and the establishment of the Federal government. The Act removed all disabilities save that of "certificates," the certificate plan providing that those who were not orthodox Congregationalists and who wished to be exempt from the tax for the Established Church were allowed to pay their tax to their own body, provided they were regular attendants at another church. This was a great step forward. As the Reverend James Dana (1735–1812), pastor of the First Church of New Haven, wrote: "Well informed Protestants are at length generally agreed in allowing to all the right to private judgment . . ."[182]

The form of this certificate differed somewhat from time to time. That adopted in 1791 may be considered as characteristic:

> We have examined the claim of —— who says he is a Dissenter from the Established Society of —— and hath joined himself to a church or Congregation of the

name of ——; and that he ordinarily attends upon the public worship of such Church or Congregation; and that he contributes his share and proportion toward supporting the public worship and ministry thereof, do upon examination find that the above facts are true. Dated

Justice of the Peace.[183]

Later in 1791 the legislature, feeling that it perhaps had gone too far, passed a new law which permitted each dissenter to write his own certificate and file it with the clerk of the Established Society where he dwelt.[184]

Thus dissent inserted an opening wedge, but Congregationalists continued to receive special favors. For instance, in 1785–86 the legislature, when arranging for the sale of the Western Reserve lands and the division of the proceeds among the various Protestant denominations, provided that in each township sold five hundred acres should be reserved for the gospel, five hundred for the schools, and two hundred and forty acres "to be granted in fee simple to the first gospel minister who shall settle in such town." As the Congregationalist group was the most numerous and active in the Reserve, this gave it a great advantage during the short time that the plan continued in operation.[185]

Connecticut approached a voluntary church system by the action of 1784. This was confirmed by the following law adopted in 1791:

Be it enacted by the Governor and Council, etc., That in future, whenever any person shall differ in sentiments from the worship and ministry, in the ecclesiastical societies in this state, constituted by law within certain local bounds, and shall choose, to join himself to any other denomination of christians, which shall have formed themselves into distinct churches or congregations, for the maintenance and support of the public worship of God, and shall manifest such his choice, by a certificate thereof, under his hand lodged in the office of the clerk of the society to which he belongs—such person shall thereupon, and so long as he shall continue ordinarily, to attend on the worship and ministry in the church or congregation, to which he has chosen to belong as aforesaid, be exempted from being taxed for the future support of the worship and ministry in such society.[186]

The Congregational ministers of the Standing Order wished to hold on to their special privileges and realized that they had the support of a large majority of the citizens. They opposed all actions of the British which they thought imperiled colonial self-government. As they wrote to their ministerial colleagues in Boston on the eve of the Revolution: "The taking away of civil liberty will involve the ruin of religious liberty also."[187] But little by little their conception of religious liberty was being broadened by the colony and the succeeding state to include the protection of other groups than the establishment.

In 1793 a law was passed to appropriate interest on money received from the sale of the lands in Connecticut's Western Reserve to the various denomina-

tions in such manner as the Assembly might decide. Two years later it was voted that interest on "receipts from sale of Western lands should be apportioned among the school societies, thus establishing the State's permanent School Fund."[188]

In 1798 the schools were placed under boards of local officers and ministers, instead of local ministers exclusively.

In 1801 the Episcopalians secured an act of incorporation for their Cheshire Academy and about the same time the privilege of conducting a lottery in its behalf.

In 1802 the Baptists sent to the Assembly a protest with thousands of signatures against the Certificate Act of 1791. This they followed up in successive years, although the petitions were not formally received for over a decade.

In the same year, 1802, Abraham Bishop (1763–1844), a prominent Republican politician and officeholder of New Haven, became the recognized leader in the movement to separate Church and State through legislative action. He published several pamphlets on the subject, including *Proofs of a Conspiracy, against Christianity, and the Government of the United States; exhibited in Several Views of the Union of Church and State in New-England;* and *Church and State. A Political Union, formed by the Enemies of Both. . . .* These show the major linė of attack. On the title page of the "Wallingford Address," *Proofs of a Conspiracy,* as it is frequently called, appears the epigram "Our Statesmen to the Constitution; our Clergy to the Bible." This was characteristic of the utterances of the time.

About 1811 the leaders of Episcopacy began to be found in large numbers among the supporters of Republicanism.[189] Their Church was in an awkward position. It did not like the extremes of the Methodists and Baptists as opposed to the dignity and social prestige of the Congregationalists, but it realized increasingly that its only chance to overcome established Congregationalism was by giving up support of the Federalists and throwing its influence to the new Republican–Democratic party.

In 1815 Trinity Church, Episcopal, probably one of the most dignified church buildings in New England, was allowed to be built on the New Haven Green.

These were steps forward of vital significance, especially when it is realized that the old status quo of Establishment had not suffered any serious breach before independence, except for the Act of 1727, when, as a result of a petition from Fairfield County, Anglicans with an organized society within reasonable distance were permitted, on filing the prescribed applicant for a certificate, to tax their own membership for the support of the parish, a privilege that was granted to Baptists and Quakers two years later. But this was not satisfactory. To be known as a "certificate man" placed one in a lower social category,[190] and

the certificates could be granted only by a justice of the peace, who was invariably an upholder of the Established Church. The plan was doomed.

The old Church-State connection was soon to disappear in spite of its support by the conservatives who felt that the continuance of the Standing Order was legitimate and desirable. As late as December 8, 1813, President Timothy Dwight (1752–1817) speaking to the senior class of Yale College on the subject "Ought the Clergy to be supported by Law," favored state support, but took the ground that under the then existing laws of Connecticut this aid did not, strictly speaking, constitute a Congregational "establishment."[191]

(4) THE VICTORY FOR RELIGIOUS FREEDOM (1818)

The final victory for religious freedom in Connecticut was now near. A good omen was the passing by the Assembly in 1816 of a law to repeal the penalty for nonchurch attendance. From about 1815 on, the Tolerationists, who had thrown in their lot with the Republicans, had the support not only of all the Baptists and Methodists, but also of the few Unitarians, Universalists, and Quakers in the state, and of most of the Episcopalians. The Roman Catholic Church was not concerned, because it had no priest or chapel in Connecticut until the 'twenties.[192] The strategy of the Republicans was to put up as a candidate for governor a Congregationalist of established public position who was not identified with the Standing Order, with an Episcopalian as his running mate. This was done in 1817, when an almost ideal ticket was placed before the voters in the April elections. It consisted of Oliver Wolcott, former Secretary of the Treasury, and Jonathan Ingersoll. They won. The support by many of the leading Federalists in the state, both lay and clerical, of the discredited Hartford Convention of 1814–15 was a factor in swelling the Republican vote. Wolcott secured 13,655 votes to his opponent's 13,119. This meant that the reform party had gained its point.

The victory was hailed by liberal public opinion all over the country. The *Baltimore Patriot* summed up the situation by saying: "The sweet and pacific voice of toleration, so worthy the name of republicanism, is now heard where before nought but the hoarse and hateful accents of persecution and illiberality resounded."[193]

John Cotton Smith was the last of the old Puritan governors of Connecticut, as Wolcott was the first of the new order, and Smith had been kept in office for ten years. The opposition party had described itself as a union of all parties and sects who detested political Congregationalism and who believed that even dissenters should receive equal privileges and a fair share of offices,[194] and they proceeded to live up to their principles in this matter.

Governor Oliver Wolcott (1760–1833) in his inaugural address to the General

Assembly showed clearly his convictions on the subject of religious freedom. He said:

> It is the right and duty of every man, to worship and adore the Supreme Creator and Preserver of the Universe, in the manner most agreeable to the dictates of his own conscience; and no man or body of men have, or can acquire, by acts of licentiousness, impiety, or usurpation, any right to disturb the public peace, or control others in the exercise of their religious opinions or worship.
> . . . There are no subjects respecting which the sensibility of freemen is more liable to be excited to impatience, than in regard to the rights of conscience, and the freedom of suffrage. So highly do the people prize these privileges that they have sometimes ascribed to unfriendly motives towards particular sects and denominations what was sincerely intended to secure an equality of rights to every portion of the community.[195]

Lyman Beecher (1775–1863) in his *Autobiography* gives an illuminating sidelight on the governor and his views which were so unsatisfactory to the old Standing Order, of which Beecher was himself one of the leading representatives. Writing from Litchfield under date of December 4, 1817, he says: "The Governor resides here. . . . He is a Toleration man. Comes half a day to meeting, and no more . . . !"[196]

The Assembly, under the leadership of their liberal governor, modified the law regarding certificates so that they were to be lodged with the town clerk rather than with the clerk of the settled society, and all denominations were given equal privileges in taxing their members, and only their members, for the support of religion, though in the case of the Congregationalists the state remained a party to its collection.[197]

In the same year, 1817, by a national refund of state war expenses, a grant or bonus was made by the General Assembly to various religious bodies in Connecticut. The act was entitled "An Act for the support of Literature and Religion." The Congregationalists received, according to their tax lists, one-third; the Episcopalians, one-seventh; the Baptists, one-eighth; the Methodists, one-twelfth; and the remainder was divided about evenly between Yale College and the general treasury.[198] This shows the general denominational pattern of the time.

The Episcopalians accepted their share. The Baptists and Methodists at first protested, not accepting until after the severance of the Church-State connection. The Congregationalists' portion was considerable—$68,000—which they gratefully accepted, although only yielding to necessity in having the state's bounty shared by other churches. The dissenting groups in general took the ground that the act was "a political trick to buy their approval of an unjust church establishment."[199]

The next year, 1818, the Tolerationists received a larger majority. An Episcopal minister and a Methodist elder were chosen among the chaplains of the lower house, and arrangements were made for calling a convention to give Connecticut a written constitution with the new toleration ideas recognized. On May 14, 1818, an Episcopalian, the Reverend Harry Croswell (1778–1858), Rector of Trinity Church, New Haven, delivered the official election day sermon, a non-Congregationalist being chosen for the first time in history. He took as his text "Render unto Caesar the things that are Caesar's, and to God the things that are God's." It was a plea for Christian toleration and an assault on political religion.[200]

The eagerly awaited constitutional convention, provided for at the previous session of the legislature, assembled August 26, 1818, in the Statehouse in Hartford. A resolution was adopted inviting the various ministers of the city to serve as chaplains, and another was passed "to proceed at this time to form a Constitution of Civil Government for the people of this State."[201]

The preamble of the Bill of Rights, taken largely from that of the Mississippi Constitution of the previous year, was adopted without debate.

> The people of Connecticut, acknowledging with gratitude the good providence of God, in having permitted them to enjoy a free government, do, in order to more effectually define, secure and perpetuate the liberties, rights and privileges, which they have derived from their ancestors, hereby, after a careful consideration and revision, ordain and establish the following Constitution and form of civil government.[202]

The bill also stated "that all men when they form a social compact are equal in rights; and that no man or set of men are entitled to exclusive public emoluments or privileges from the community."[203] Its third section had these important words:

> That the exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in this State; provided that the right hereby declared and established shall not be construed as to excuse acts of licentiousness or to justify practices inconsistent with the peace and safety of the State.[204]

The next section provided that "no preference shall be given by law to any Christian sect or mode of worship."[205] This meant that, although all religious forms consistent with morality and order were given protection, Christianity was virtually recognized as the state's belief.

The article regarding religion in the constitution, as drafted by a subcommittee of Jeffersonian Republicans, was adopted in the following form:

> (1) It being the right and duty of all men to worship the Supreme Being, the Great Creator and Preserver of the universe, in the mode most consistent with the dictates of

their consciences; no person shall be compelled to join or support, nor by law be classed with, or associated to any congregation, church or religious association. . . . And each and every society or denomination of Christians in this State, shall have and enjoy the same and equal powers, rights and privileges; and shall have power and authority to support and maintain the Ministers or Teachers of their respective denominations, and to build and repair houses for public worship, by a tax on the members of their respective societies only, . . . or in any other manner.

(2) If any person shall choose to separate himself from the society or denomination of Christians, to which he may belong, and shall leave a written notice thereof with the clerk of such society, he shall thereupon be no longer liable for any future expenses, which may be incurred by said society.[206]

The first section was passed by vote of 103 to 86, and a motion to strike out the second was lost by 85 to 105. This shows the strength of the two parties. Later attempts to omit the whole section regarding religion were lost, and showed an even larger majority in its favor, while the final vote approving the entire constitution was passed 134 to 61.[208] In spite of its providing for the separation of Church and State it was a rather conservative document and was ratified by a popular vote, Hartford and Litchfield counties being the only ones in opposition.

Lyman Beecher (1775–1863) records an imaginary dream which he had during the debate on the abolition of the Church-State connection when he realized that the Standing Order was beaten.

In this moment of dejection my heart was cheered by the sight of the good old ship CONNECTICUT—her hull and rigging all the same, but oh how changed! With the exception of some few of her old officers, she was commanded by midshipmen and common sailors, cooks and cabin-boys, and navigated by raw hands. Her broad pennant, which had floated at masthead for almost two centuries, and whose motto was, *"Talents and virtue shall guide us through,"* was trodden under foot, and in its place was a new pennant, on which was inscribed in capitals, *"Toleration; or reason* and philosophy shall guide us." Her sails were tattered, and she was only moving under the influence of former gales.[209]

This shows in an illuminating way the spirit of the time among Connecticut conservatives, and yet, as we shall see, the dire results they envisioned did not materialize, and almost all—including to some extent Beecher himself—realized that the change had been carried out with much good to the cause of religion. As a matter of fact, the abolition of the state tax for Congregationalism caused only temporary embarrassment to the churches. They were helped by the cooperative spirit of the time and by the fact that the income from church and glebe lands had never been confiscated. Indeed, the prompt starting of Sunday schools to meet the needs of definite religious instruction, not permissible under

the new charter in the common schools of the state, and other factors, made the Church spiritually stronger than ever.

As early as 1824 Beecher recognized that his forebodings were not justified, and that the congregations were thriving under the voluntary system.[210] Furthermore, Beecher's son, in editing his father's *Autobiography,* records an incident which impressively sums up both the immediate reaction of the Standing Order to the changed situation and its fine ultimate results.

> I remember seeing father the day after the election, sitting on one of the old-fashioned rush-bottomed kitchen chairs, his head drooping on his heart, and his arms hanging down. "Father," said I, "what are you thinking of?" He answered solemnly, "The Church of God." . . . It was a time of great depression and suffering. . . . It was as dark a day as ever I saw. The odium thrown upon the ministry was inconceivable. The injury done to the cause of Christ, as we then supposed, was irreparable. For several days I suffered what no tongue can tell *for the best thing that ever happened to the State of Connecticut.* It cut the churches loose from dependence on state support. It threw them wholly on their own resources and on God. . . . They say ministers have lost their influence; the fact is, they have gained. By voluntary efforts, societies, missions, and revivals, they exert a deeper influence than ever they could by queues and shoe buckles, and cocked hats and gold-headed canes.[211]

The passing of the constitution was followed by giving to all ministers of the gospel, and not merely Congregationalists, the right to perform marriages. The Episcopalians succeeded at last in securing a charter for a college, Washington, now Trinity, in 1823, and the Methodists similarly secured a charter for Wesleyan in 1831. The victory of the liberals for Church–State separation and religious freedom was practically complete.

Section 7. THE LONG STRUGGLE IN MASSACHUSETTS

The struggle for religious liberty in Massachusetts was much longer than in Virginia or Connecticut. Indeed, it was not finally settled until 1833. In all three states Baptists took a leading part in opposition to the status quo.

(1) THE STRUGGLE OF DISSENTERS PRIOR TO THE REVOLUTION

To understand the Massachusetts struggle against the Established Church we must go back to early colonial days. As early as 1555 the Religious Peace of Augsburg made the religion of the State that of the ruling prince. It was this to which the Puritans were accustomed in England, and to this they objected, especially as England was under Anglican rulers except during the Commonwealth. It was perhaps not unnatural that, although they left England largely to secure freedom to worship God without interruption and according to the

dictates of mind and conscience, they should themselves adopt in their new home the old theory that the rulers had the right to determine the religion of the State. In this case, as the majority of the people and their rulers were strong Puritans, a Puritan State–Church was under the conditions of the time almost inevitable. Indeed, they had never been strongly opposed to an Established Church as such. They were merely opposed to an Established Church which they considered based on principles inconsistent with the New Testament and not functioning for the religious welfare of the people.

At the time of the founding of Massachusetts Bay there were in England four religious groups, as far as Church–State relations were concerned: namely, the Anglicans, who had the Establishment; the Puritans, who, as their name indicated, wished the Establishment purified; the separatists, who thought the Anglican Church quite hopeless, and inclined toward a less dominant independent Church, but who had some difference of opinion as to just what form it should take; and the Baptists, frequently but erroneously referred to as Anabaptists, who, though mostly obscure and rather ignorant people, saw clearly the vital need of absolute separation of Church and State. They were not as prominent in England as in Germany, where as Anabaptists they were very persistent.[212]

These four groups were all represented in seventeenth-century Massachusetts, but the Puritans were in the overwhelming majority. The extreme Separatists, of whom Roger Williams (*c.* 1603–82/3)[213] was the leading representative, had established their own colony in Rhode Island, where they were joined by Baptists. The Anglican liturgy was first read in Massachusetts in 1686. There was no thought even of a Roman Catholic Church. None was established in the colony until 1788, when a French priest celebrated mass in the former Huguenot Church in Boston. But even when Bishop Carroll visited the city in 1791 he could report only about one hundred and twenty Catholics in a city which now counts the members of this communion by the hundreds of thousands.[214]

The Massachusetts Bay Colony was from the first made up of strict Puritans, in this respect being distinguished from the Plymouth Colony. The latter, owing to the influence of their former pastor John Robinson and others, was much more tolerant, although by 1691, when the two colonies were united, conditions in the second approximated those in the first, which had the general religious support of the other more powerful New England colonies. But when we think of Massachusetts in our brief survey we shall think primarily of the Bay Colony, which dominated what is now the state of Massachusetts. We have space to mention only a few outstanding events.

In 1631 it was enacted by the General Court that "to the end that the body of the commons may be preserved of honest and good men, . . . for the time to

come no man shall be admitted to the freedom of this body politic but such as are members of some of the churches within the limits of the same."[215] This meant that if a person was not a member of one of the regular Congregational churches he could not be a voting citizen. Professor Newman, in his *History of the Baptist Churches in the United States,* referring to this action, which was not allowed to become a dead letter, says: "We can scarcely conceive of a more perfect equipment for the exercise of tyranny and the violation of conscience than existed in this small community thus theocratically organized."[216] This enactment was one of the major factors in bringing about the banishment of Roger Williams and the establishment of the Separatists in Rhode Island.

In 1638 the General Court ordered a tax on those who did not voluntarily contribute to the support of the minister, that is, the local Congregational minister. In 1660 the colony ordered the county courts to purge their churches of unorthodox teaching. This was directed largely against the Baptists and Quakers.

By this time the civil power in the colony was being used not only to force inhabitants, irrespective of their religious views, to support the Congregational ministers, but also to build their churches and virtually to control education.[217] The Halfway Covenant of 1662 slightly relieved the situation by not requiring a confession of religious experience for church membership, but it applied only to Congregationalists, so did not help as far as outsiders were concerned. It was still true that only Congregationalists could vote on election day, and they only could be elected to public office.

In 1672 the General Assembly ordered a revised edition of the laws in which it was

> ordered and declared by the Court, that if any Christian within this jurisdiction shall go about to subvert and destroy the Christian faith and religion, by broaching and maintaining any damnable heresies; as denying the immortality of the soul, or resurrection of the body, or any sin to be repented of in the regenerate, or any evil done by the outward man to be accounted sin, or denying that Christ gave himself a ransom for our sins, or shall affirm that we are not justified by his death and righteousness, but by the perfection of our own works, or shall deny the morality of the fourth commandment, or shall openly condemn or oppose the baptizing of infants, or shall purposely depart the congregation at the administration of that ordinance, or shall deny the ordinance of magistracy, or their lawful authority to make war, or to punish the outward breaches of the first table, or shall endeavor to seduce others to any of the errors and heresies above mentioned; every such person continuing obstinate therein, after due means of conviction, shall be sentenced to banishment.[218]

This, as will be seen, included the Baptists among those who held "damnable heresies," while the Quakers were considered to be both guilty of such practices and to be "irreligious persons."

In 1679 Charles II (1630–85) wrote to the authorities in Massachusetts requiring them to allow the Protestants liberty of conscience and stating that no good subjects of his, for not agreeing in the Congregational way, should "be subjected to fines or forfeitures, or other incapacities for the same; which is a severity to be the more wondered at, whereas liberty of conscience was made a principal motive for your first transportation into those parts."[219] But his reasonable wishes were not carried out.

In 1691 the new charter of William and Mary extended toleration to all Protestant Christians, but not to Roman Catholics, or "Papists," as they were then generally called. The nonconformists found it extremely difficult to make its provisions effective, and within a decade the Congregationalists had practically regained their position as the only tax-supported Church.

In 1724 the crown upheld the Quakers in their refusal to support the established Congregational Church, under this charter. The laws under which they had been persecuted were disallowed.

In 1727 the Episcopalians received their first real relief by the passing of a law to the effect that any one of their number who lived within five miles of an Episcopal church and consistently attended its worship might be permitted to have his religious tax assigned to his minister rather than to the Congregationalists.

In 1729 a similar privilege was granted to Quakers and Baptists. In the next decade the five-mile restriction was removed. The tax was collected by the town officials and handed over to the church concerned.

During this first half of the eighteenth century, when there was a good deal of migration to the western part of the province, there was much Church–State difficulty. This was due to the fact that the General Court, in giving proprietors the right to settle in a new town, stipulated that a church, that is a Congregational church, must be built, and its ministers supported. This meant that frequently Baptists and other nonconformists had to contribute not only to the maintenance but to the erection of a Congregational church in addition to their own place of worship.

Such was the situation when the Revolution approached. Only here and there was a representative of the Congregational Church found in the colony who recognized the principle of religious freedom and of separation of Church and State.

The "Separates" or "Strict Congregationalist" churches were more liberal than the members of the Establishment. They had broken away just before the middle of the eighteenth century from the parent stock because of opposition to the Saybrook platform of 1708, which substituted the "consociation" of churches for extreme independency; the provisions of the Halfway Covenant,

which permitted the children of church members to have membership privileges without personal experience of conversion; and what they believed to be the overemphasis of established Congregationalism on the intellectual side of ministerial training and preaching. The new group also was more interested in revivals and conversions.[220] They were as a result unpopular with the civil authorities and suffered at their hands; and were specially indignant at having to pay taxes for the support of an Establishment whose members they considered unconverted. They were therefore inclined to join the Baptists in demanding separation of Church and State. For instance, in 1749 their congregations in seventeen towns of which Roxbury was perhaps the most important, sent a petition to the Assembly, which said: "God hath given to every Man an Unalienable Right in Matters of His Worship to Judge for himself as his Conscience reserves y^e^ Rule from God."[221] It speaks of their many grievances, including the imprisonment of some of their members, and urges redress. But Massachusetts was not yet ready for separation of Church and State, so the petition was disallowed, as were frequent similar petitions of the Baptists. But some progress in the matter of the rights of well-established dissenting groups is evident. For example, a committee of the proprietors of the town of Ashfield made in 1771 a refreshing statement. The matter at issue was the rights of the Baptist churches which were developing in Massachusetts. In a communication to the General Court the Ashfield committee stated that "The legislature, we humbly concede, *cannot, with any propriety, interpose in matters of religion,* farther than to *secure* the *good* and prevent the *ill* effects of it to the State."[222] The italics are in the original.

The whole document is interesting. Two paragraphs are worth quoting:

> We beg leave to observe here, that as it belongs to the justice of the legislature to protect and support all regular religious societies of protestants of every denomination, so it equally belongs to their wisdom and prudence not to encourage such as cannot, in any tolerable sense, answer the valuable ends of religion to the Community—The legislature, we humbly conceive, *cannot, with any propriety, interpose in matters of religion,* farther than to *secure* the *good* and prevent the *ill* effects of it to the state. Whenever, then, any religion or profession wears an ill-aspect to the state, it is become a proper object of attention to the legislature—Of this kind, most evidently, is that religion which rejects men of learning and ability for teachers, and altogether chooses such as are illiterate and men of ordinary abilities. It's evils do not need to be pointed out. It may suffice to mention one thing which is a clear consequence of it, and that is a kind of poisoned enthusiasm which perplexes and endangers the churches—And this is the religion of y^e^ people whom we have been describing—
>
> It is therefore humbly hoped that if any farther indulgencies or exemptions should be granted the baptists, a just and necessary distinction may be made between those

societies which are regularly formed and properly organised, and such whose very being reproaches religion, and their principles subversive of all those ends of it which it is the proper business of y^e^ legislature to secure to the state as far as shall be found practicable—[223]

(2) THE STRUGGLE OF DISSENTERS DURING AND AFTER THE REVOLUTION

In Massachusetts, as in most other parts of New England, the Congregational Church at the outbreak of the Revolution was still in most ways the strongest institution in the state. It was in some but not all respects as much "established" as the Church of England in the home country. When the Revolution came, and the new government was formed, there were "resonant and high sounding clauses concerning the sanctity of religion and liberty, immediately followed by others denying religious liberty in any adequate sense to many creeds and sects."[224] There was no longer the formally and exclusively established and supported Church of earlier times, but Congregationalism continued to be definitely favored, and it was a long time before Massachusetts, which had much influence on other states, was able to secure absolute equality before the law for all religious bodies.

Typical of the more liberal opinion developing when the state was being organized after independence was the case of Pittsfield on the western frontier. The town unanimously voted in 1779 in favor of a constitutional convention, and elected as two of the members of its Committee of Instruction the Reverend Thomas Allen, Congregationalist, the leading citizen of the town, and the Reverend Valentine Rathbun, Baptist, also a sincere and intelligent patriot. A decade earlier only Congregationalists would have been chosen. In the instructions, in which the delegates were required to demand a bill of rights, occurs the statement that

> as all men by nature are free, and have no dominion one over another, and all power is founded in compact; that every man has an unalienable right to enjoy his own opinion in matters of religion, and to worship God . . . without any control whatsoever, and that no particular mode or sect of religion ought to be established. . . .[225]

In 1780 Massachusetts, which had been under the Provincial Congress since 1774, adopted a state constitution containing this important Declaration of Rights:

> I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.
>
> II. It is the right as well as the duty of all men in society, publicly, and at stated

seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession of sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

III. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality; and as these cannot be generally diffused through a community but by the institution of the public worship of God, and of public instructions in piety, religion, and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of GOD, and for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.

And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

And all moneys paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another shall ever be established by law.[226]

This Declaration of Rights was largely the work of John Adams (1735–1826). He was doubtless influenced in the matter of clause II on religious freedom by the Virginia declaration. Benjamin Franklin recognized the progress symbolized by this factor of the constitution.[227]

The latest constitution of the state, drafted by a constitutional convention 1917–20 and ratified by the people, contains unchanged the important Article II of 1780 as to the duty of religious worship, although, as we shall see later

in this section, Article III was modified in 1833 in several particulars and particularly by omitting its reference to Protestant teachers.[228]

The Declaration of Rights was a rather conservative document from a modern point of view, but it must be remembered that it represented a definite step forward for a Puritan commonwealth long accustomed to an Established Church. Furthermore, the extremes of the newly established Shakers, who began their American preaching in 1774 in New York, near the western boundary of Massachusetts, and even more those of the rapidly expanding Baptists, made it seem to many unwise to provide for complete religious freedom. They were afraid it might have a bad effect on standards of culture and on public order.

In 1818 occurred an event of great importance affecting Church–State relations. The pastor of the First Church of Dedham, Massachusetts, resigned to accept the presidency of Middlebury College. The orthodox Congregationalists had been in control of the church up to this time. Now there were two factions, one—the society—favoring the growing liberal (Unitarian–Harvard College) group; and the other—the church—the conservative Andover Theological School group. The parish—that is the "society" which held the property—was for the Harvard man, while the church members opposed him, 17 to 15. The matter came before the courts, which decided, as we shall see later,[229] in favor of the society. The decision turned the course of Congregational history, giving the Unitarians a great advantage.[230] The two groups, Unitarians and Trinitarians, both claiming to be successors of the old "established" Church, fully realized the seriousness of the issue.

The constitutional convention of 1820 was largely taken up with considering four matters connected with the Church–State problem, namely, compulsory attendance at public worship; the administration of Harvard College; the matter of oaths; and the taxing of nonresident proprietors for the maintenance of local worship.[231] Father Thorning, considering the results as a Roman Catholic scholar, says that "From the standpoint of the relation of Church and State and the growth of religious freedom the results of 1820 were probably nil."[232]

The convention was notable for an address by Daniel Webster (1782–1852). This showed his strong conviction as to the importance of retaining the definitely Christian character of the American State. He said:

> I am clearly of opinion that we should not strike out of the Constitution all recognition of the Christian religion. I am desirous, in so solemn a transaction as the establishment of a Constitution, that we should keep in it an expression of our respect and attachment to Christianity,—not, indeed, to any of its peculiar forms, but to its general principles.[233]

The proposals submitted to the vote of the citizens were as follows:

(a) The religious provisions of the Third Article were no longer to be "confined to Protestant teachers"; (b) unincorporated religious societies were to be recognized as well as incorporated ones; (c) all money paid by a subject for the support of religious worship was to be applied toward the support of the public worship upon which he attended; (d) money paid by non-resident proprietors who lived outside of the commonwealth was to be applied toward the support of worship in the "town, precinct or parish, by which such taxes were assessed"; (e) attendance at public worship was no longer to be compulsory. . . .[234]

This proposed amendment was defeated by a vote of 19,547 to 11,065.[235]

At the time the convention was held about twenty Massachusetts towns had adopted the voluntary system of church support, although in general both Congregationalists and Unitarians were inclined to favor a State-supported Church and with it the continuance of religion as an important factor in public education.

The battle by the dissenters of Massachusetts to gain full legal rights was reproduced in most other states, but generally success came sooner and with less difficulty. It was naturally everywhere the nonestablished churches, and particularly the Baptists, who led the movement for disestablishment, which they favored both from reasons of religious conviction and practical advantage.

(3) THE FINAL DISESTABLISHMENT (1831–33)

In 1831 the state legislature voted in favor of disestablishment; the vote in the Senate being 25 to 13; in the House, 348 to 93. Two years later the constitutional amendment embodying this proposal was ratified by an overwhelming popular vote, 32,234 to 3,273.[236] This meant that Church and State were to be legally separated in this old Puritan commonwealth, and that the ground was laid for the building up of churches entirely independent in support and government, and for the development of an effective and democratic public school system.

Here is the text of Article the Eleventh as adopted by the legislatures in 1832 and 1833, and approved and ratified by the people November 11, 1833:

As the public worship of God, and instructions in piety, religion and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary

expenses; and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made or entered into by such society: And all religious sects and denominations demeaning themselves peaceably, and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.[237]

This took the place of the third article of the Declaration of Rights of 1780.[238]

Religious societies were now both self-governing and self-supporting. As a result, Governor Edward Everett (1794–1865) in his inaugural message of 1836 said:

Taught by the wisdom of ages the mischief of an alliance of church and state, we have incorporated it into our system, as an article of our political faith, that religion is a concernment between the conscience of man and his creator, and exists in its greatest purity, when it rests upon the public sentiment of an enlightened community.[239]

Section 8. THE PROGRESS IN THE ORIGINAL STATES[240]

It must be remembered that the thirteen original colonies had become loosely federated states prior to the adoption of the Federal Constitution. Indeed, the major public debates on the subject of religious freedom had already taken place in the states[241] prior to the meeting of the framers of the Constitution in Philadelphia. We have already considered the securing of guarantees of religious liberty in the states of Virginia, North Carolina, New York, Massachusetts, and Connecticut. Here we are concerned with progress in the other states.

The early state constitutions were in general based on colonial models—noteworthy changes being that constitutions were now written; that an elective governor, whose powers were decreased to place the major responsibility on the legislature, took the place of the powerful governor appointed by the crown; and that progress was made in the matter of civil rights, including religious freedom. Eight states, following Virginia's courageous lead, adopted bills of rights. All provided for the distribution of governmental powers among executive, legislative, and judicial functions; a plan whose foundations had been provided for in colonial governments, but which had been strengthened by our Revolutionary political philosophers influenced by Montesquieu's *On the Spirit of Laws*. This volume, completed in 1748, was an independent and significant study of three forms of government—republic, monarchy, and despotism.

The movement for duly constituted state governments to take the place of the former colonies was stimulated by the action of Congress May 10, 1776. This advised the colonies by resolution to form new governments "such as shall best conduce to the happiness and safety of their constituents."[242]

Prior to this action only two of the colonies, New Hampshire and South Carolina, had adopted state constitutions, and these were of a provisional character, being superseded prior to the adoption of the Federal Constitution. The dates of the new constitutions were as follows:[243]

New Hampshire (1)	5 Jan. 1776	Georgia	5 Feb. 1777
South Carolina (1)	26 Mar. 1776	New York	20 April 1777
Virginia	29 June 1776	Vermont	8 July 1777
New Jersey	2 July 1776	South Carolina (2)	19 Mar. 1778
Delaware	22 Aug. 1776	Massachusetts	15 June 1780[244]
Pennsylvania	28 Sept. 1776	New Hampshire (2)	13 June 1784
Maryland	11 Nov. 1776	Connecticut	5 Oct. 1818
North Carolina	18 Dec. 1776	Rhode Island	5 Nov. 1843[245]

These dates are recalled here to bring out clearly an essential fact in our discussion: that state constitutions preceded the Federal Constitution, and that consequently the fundamental battles for religious freedom were fought out in the state conventions prior to the Constitutional Convention in Philadelphia in 1787. It must be remembered also that these constitutions were the first written constitutions of large bodies politic in history formed by duly chosen representatives of the citizens with power to act. "In all free states the constitution is final," John Adams (1735–1826) had written, and Americans everywhere had demanded "a standing law to live by."[246]

Let us now take up these state actions in order.

(1) NEW HAMPSHIRE

New Hampshire was the first state to adopt a constitution, January 5, 1776; but this document has nothing to say about religion, consequently it may be assumed that the relatively liberal provisions of the "Commission" granted in 1680 by Charles II to John Cutt for constituting a "President & Councell for y^e^ Province of New Hampshire in New England" were continued in force:

> And above all things we do by these presents will, require & command Our said Councell to take all possible care for y^e^ discountenancing of vice, & incouraging of vertue & good living; that by such examples y^e^ infidel may be invited & desire to partake of y^e^ Christian Religion, & for y^e^ greater ease & satisfaccion of our said loving subjects in matters of religion We do hereby will, require & command that liberty of conscience shall be allowed unto all protestants; & that such especially as shall be con-

formable to y^e^ rites of y^e^ Church of England, shall be particularly countenanced & incouraged.[247]

In 1778 an unsuccessful attempt was made to revise the constitution. This was followed by another constitutional convention which closed its sessions October 31, 1783. The constitution adopted was put into operation the following year. Its provisions regarding religion are thus stated in the Bill of Rights:

III. When men enter into a state of society, they surrender up some of their natural rights to that society, in order to insure the protection of others; and, without such an equivalent, the surrender is void.

IV. Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the RIGHTS OF CONSCIENCE.

V. Every individual has a natural and unalienable right to worship GOD according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained in his person, liberty or estate for worshipping GOD, in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments or persuasion; provided he doth not disturb the public peace, or disturb others, in their religious worship.

VI. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection; and as the knowledge of these, is most likely to be propagated through a society by the institution of the public worship of the DEITY, and of public instruction in morality and religion; therefore, to promote those important purposes, the people of this state have a right to impower, and do hereby fully impower the legislature to authorize from time to time, the several towns, parishes, bodies-corporate, or religious societies within this state, to make adequate provision at their own expence, for the support and maintenance of public protestant teachers of piety, religion and morality:

Provided notwithstanding, That the several towns, parishes, bodies-corporate, or religious societies, shall at all times have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance. And no portion of any one particular religious sect or denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect or denomination.

And every denomination of christians, demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain, and be in the same state as if this constitution had not been made.[248]

The "Form of Government" of the same year added nothing, except provi-

sion to meet the scruples of "the denomination called Quakers" and others "scrupulous of swearing,"[249] and the introduction of clauses to the effect that every person chosen as a representative in the state legislature "shall be of the protestant religion, and shall cease to represent such town, parish, or place immediately on his ceasing to be qualified as aforesaid."[250]

The constitution of 1792 continued in force these provisions regarding religion and religious freedom, with only a few minor and unimportant verbal changes. Under this constitution, which was fairly liberal for the period, acts were passed from time to time to make it easier for different religious groups. A specially important event was when Governor William Plumer (1759–1850), in his message to the legislature June 6, 1816, enunciated a broad doctrine of religious toleration. He said:

> The rights of conscience and of private judgment in religious matters are not only secured by our Constitution to all men, but are, in their nature, inalienable. Civil and religious liberty have usually flourished and expired together. To preserve their purity requires the constant, unremitted vigilance of the people and their legislators. If any religious associations request acts of incorporation, to enable them more fully and securely to enjoy their religious privileges, it appears to be our duty to grant them. The correctness of their tenets is a subject that lies between God and their own consciences, and is one that no human tribunal has any right to decide. While, therefore, it becomes every man scrupulously to examine the foundations of his own belief, he cannot guard with too much jealousy against the encroachments of the civil power on his religious liberties.[251]

The legislature ratified his recommendation, thereby placing all the churches of the state legally on practically the same basis, although there were still provisions in the constitution that discriminated against Roman Catholics in the matter of the holding of certain public offices. To relieve this situation the state tried several times to eliminate all specific use of the word "Protestant" in its constitution—a use which was probably in part due to the taunt common in 1784 that the military alliance with France might result in an alliance with the French religion practiced in the neighboring Canadian province of Quebec.

The Democrats in the state constitutional convention of 1850 secured by a large vote proposed amendments discontinuing the old requirements. Their strongest advocates were Judge Levi Woodbury (1789–1851) and General Franklin Pierce (1804–69), later president of the United States.

A local paper[252] thus summarized General Pierce's argument:

> The religious test in the constitution had undeniably been a stigma upon the State at home and abroad. It had been repeatedly named to him, and once at least in a foreign land, as unworthy of the intelligent and liberal spirit of our countrymen.

Although he had at times felt keenly the reproach, he had uniformly referred, as he had no doubt other gentlemen had done, to other parts of the constitution as illustrating the true and free spirit of our fathers, and to these as, at least for many years, a blank.[253]

This and other arguments were so conclusive that only seven members voted against striking out the words "of the Protestant religion" in the qualifications for certain state offices, and the word "Protestant" in the phrase of the Bill of Rights referring to the support of public teachers.[254]

In this controversy Pierce took an important part.

Can it be possible [he said] that the people of New Hampshire will vote to retain a feature in its fundamental law, engrafted there under peculiar circumstances, repugnant to the whole scope and tenor of the Constitution, upon which it stands as a fungus—dead, to be sure, but still there, a blot, a deformity, obnoxious to the last degree, to the spirit of the age in which we live? How can we say that our land is an asylum of other countries when we fail to extend to them the shield of equal rights, and say to them, this is the panoply under which, so far as the dearest and most sacred rights are concerned, you may shelter yourselves? I love and reverence the faith of my Protestant fathers; but do not Martin Lawler and his countrymen now near me, and who have this day exercised the rights of free men, revere and cling to the faith of their fathers? Are you to tell them that they can vote for you but are to be excluded from the privileges of being voted for?[255]

But under the constitution these amendments required a two-thirds vote of the people. This was secured in 1852 against the Protestant requirement for senators and representatives, so that this relic of an earlier day was dropped; but the proposal to omit the specific power granted to the legislature to authorize towns or religious societies to provide for "public Protestant teachers of piety, religion and morality" did not pass.[256]

The constitution now in force provides that "Every individual has a natural and unalienable right to worship God according to dictates of his own conscience, and reason," and that "no person, of any one particular religious sect or denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect, or denomination."[257] There are, however, three slight reminders of the old Protestant days, in that the Bill of Rights still refers to "morality and piety, rightly grounded on evangelical principles," a phrase which was probably intended to imply Protestantism; the only groups specifically stated as "equally under the protection of the law" are "every denomination of Christians,"[258] thus apparently not including Jews, though of course as a matter of practice there is no legal discrimination against them; and there is provision by which the legislature is granted power "to authorize, from time to time, the several towns, parishes, bodies corporate,

or religious societies, within this state, to make adequate provision, at their own expense, for the support and maintenance of public Protestant teachers of piety, religion, and morality. . . ."[259] It will be noticed that this is only an authorization, not a direction; but even as such it is inconsistent with the American tradition of the impartiality of the State in matters involving the religious connections of citizens.

(2) SOUTH CAROLINA

South Carolina's first constitution, adopted March 26, 1776, followed chronologically that of New Hampshire. It contains no bill of rights and no reference to the matter of religion or religious freedom, except by implication when it criticizes the British Parliament for favor shown the Roman Catholic religion in Quebec. If the constitution of 1776 passed over the subject of religion, that of 1778 was exceptionally clear-cut and specific, providing for establishing the Protestant religion, but no specific denomination.

The clauses regarding religion provide that only Protestants could sit in the State Senate and House of Representatives; that a voter must be a "free white man, and no other person, who acknowledges the being of a God, and believes in a future state of rewards and punishment . . .";[260] and that no clergyman should be eligible for election to state offices.[261]

Then comes an article (XXVIII) which for detailed provisions to insure a Protestant State are probably without parallel in our national history.

> That all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated. The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this State. That all denominations of Christian Protestants in this State, demeaning themselves peaceably and faithfully, shall enjoy equal religious and civil privileges. To accomplish this desirable purpose without injury to the religious property of those societies of Christians which are by law already incorporated for the purpose of religious worship, and to put it fully into the power of every other society of Christian Protestants, either already formed or hereafter to be formed, to obtain the like incorporation, it is hereby constituted, appointed, and declared that the respective societies of the Church of England that are already formed in this State for the purpose of religious worship shall still continue incorporate and hold the religious property now in their possession. And that whenever fifteen or more male persons, not under twenty-one years of age, professing the Christian Protestant religion, and agreeing to unite themselves in a society for the purposes of religious worship, they shall, (on complying with the terms hereinafter mentioned, be, and be constituted a church, and be esteemed and regarded in law as of the established religion of the State, and on a petition to the legislature shall be entitled to be incorporated and to enjoy equal privileges. That every society of

Christians so formed shall give themselves a name or denomination by which they shall be called and known in law, and all that associate with them for the purposes of worship shall be esteemed as belonging to the society so called. But that previous to the establishment and incorporation of the respective societies of every denomination as aforesaid, and in order to entitle them thereto, each society so petitioning shall have agreed to and subscribed in a book the following five articles, without which no agreement or union of men upon pretence of religion shall entitle them to be incorporated and esteemed as a church of the established religion of this State:

1st. That there is one eternal God, and a future state of rewards and punishments.

2d. That God is publicly to be worshipped.

3d. That the Christian religion is the true religion.

4th. That the holy scriptures of the Old and New Testaments are of divine inspiration, and are the rule of faith and practice.

5th. That it is lawful and the duty of every man being thereunto called by those that govern, to bear witness to the truth.

And that every inhabitant of this State, when called to make an appeal to God as a witness to truth, shall be permitted to do it in that way which is most agreeable to the dictates of his own conscience. And that the people of this State may forever enjoy the right of electing their own pastors or clergy, and at the same time that the State may have sufficient security for the due discharge of the pastoral office, by those who shall be admitted to be clergymen, no person shall officiate as minister of any established church who shall not have been chosen by a majority of the society to which he shall minister, or by persons appointed by the said majority, to choose and procure a minister for them; nor until the minister so chosen and appointed shall have made and subscribed to the following declaration, over and above the aforesaid five articles, viz: "That he is determined by God's grace out of the holy scriptures, to instruct the people committed to his charge, and to teach nothing as required of necessity to eternal salvation but that which he shall be persuaded may be concluded and proved from the scripture; that he will use both public and private admonitions, as well to the sick as to the whole within his cure, as need shall require and occasion shall be given, and that he will be diligent in prayers, and in reading of the same; that he will be diligent to frame and fashion his own self and his family according to the doctrine of Christ, and to make both himself and them, as much as in him lieth, wholesome examples and patterns to the flock of Christ; that he will maintain and set forwards, as much as he can, quietness, peace, and love among all people, and especially among those that are or shall be committed to his charge." No person shall disturb or molest any religious assembly; nor shall use any reproachful, reviling, or abusive language against any church, that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by engaging them in quarrels and animosities, to the hatred of the professors, and that profession which otherwise they might be brought to assent to. No person whatsoever shall speak anything in their religious assembly irreverently or seditiously of the government of this State. No person shall, by law, be obliged to pay towards the maintenance and support of a religious worship that he does not freely

join in, or has not voluntarily engaged to support. But the churches, chapels, parsonages, glebes, and all other property now belonging to any societies of the Church of England, or any other religious societies, shall remain and be secured to them forever. The poor shall be supported, and elections managed in the accustomed manner, until laws shall be provided to adjust those matters in the most equitable way.[262]

It must be remembered that this definitely Protestant constitution was adopted after independence, and two years after Virginia had taken its effective first steps toward religious freedom by passing its Declaration of Rights. Its Anglican background is shown by the fact that it quotes at length and almost verbatim from the answers of the minister to the bishop in the ordination service of priests as contained in the *Book of Common Prayer.*

Under the constitution the Episcopal churches were allowed to continue the ownership of their property even though disestablished. In this respect the provisions were more generous than in Virginia.

Disestablishment in South Carolina was due largely to the Reverend William Tennent, Third (1740–77), a Presbyterian. He was very active in the interior; and in 1777 made a strong plea before the Assembly for complete disestablishment, showing that in the decade prior to independence the colonial treasury had paid nearly £165,000 to support the Established Church, and that about half of this amount had come from dissenters, since the Episcopal congregations numbered only twenty and the dissenters nearly four times as many.[263] He had previously come out strongly in favor of placing all religious bodies on an absolutely equal basis, and drew up and circulated a most influential petition on the subject.[264]

By its constitution of 1790 the state provided for the first time in its history for complete religious freedom "without distinction or preference." South Carolina's action in thus enfranchising Roman Catholics and other non-Protestant groups is particularly worthy of comment. It still, however, maintained the exclusion of clergymen from public office. The brief Article VIII shows great progress over the long and narrowly Protestant document of twelve years earlier. The change reflects the influence of Virginia's action and of the discussions over the Federal Constitution and its Bill of Rights.

Section 1. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this State to all mankind: *Provided,* That the liberty of conscience thereby declared shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of this State.

Sec. 2. The rights, privileges, immunities, and estates of both civil and religious societies, and of corporate bodies, shall remain as if the constitution of this State had not been altered or amended.[265]

(3) VIRGINIA

The next state to adopt a constitution after South Carolina was Virginia. Here there took place an epoch-marking debate on religious freedom which has been the subject of a special section.[206]

(4) NEW JERSEY

New Jersey had a better colonial record in the matter of toleration than most of the colonies. The grantees—Lord Berkeley and Sir George Carteret—in their Concessions of 1665, offered liberty of worship, mainly with the purpose of attracting settlers, and when Jersey came under the Quakers this was continued; in West Jersey by a law of 1681, and in East Jersey by one of 1683. In 1738, when New Jersey was joined with New York, although retaining its own Assembly, there was no great change.

The New Jersey constitution of 1776 has this to say about religious freedom:

XVIII. That no person shall ever, within this Colony, be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor, under any pretence whatever, be compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person, within this Colony, ever be obliged to pay tithes, taxes, or any other rates, for the purpose of building or repairing any other church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately or voluntarily engaged himself to perform.

XIX. That there shall be no establishment of any one religious sect in this Province, in preference to another; and that no Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that all persons, professing a belief in the faith of any Protestant sect, who shall demean themselves peaceably under the government, as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature, and shall fully and freely enjoy every privilege and immunity, enjoyed by others their fellow subjects.[207]

The state was much criticized in the early decades of the republic for excluding Roman Catholics from elective office. It seems to us today almost unbelievable that a state which had long permitted entire freedom of worship should have so long continued on a Protestant political basis. Yet such was the case, and Catholic emancipation dates only from the constitution of 1844. Under this there was no restriction against Roman Catholics as voters,[208] but only as officeholders. The question of revision was frequently debated, but the full constitution of the year of independence held until a new one was adopted sixty-eight years later. This retained Article XVIII in substantially its old form, but a new and satisfactory article was substituted for Article XVII.

The clause now read: "There shall be no establishment of one religious sect in preference to another; no religious test shall ever be required for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles."[269]

The new constitution was preceded by a preamble reading:

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which he hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this CONSTITUTION.[270]

(5) DELAWARE

Delaware inherited a tradition of religious toleration from its long association with Pennsylvania. It never had a regularly established church. After various experiences under the Swedes, the Dutch, and the English, it was transferred to William Penn in 1682. "The three lower counties," as the portion making up the modern Delaware was then called, sent representatives to the Pennsylvania legislature, and in 1701 received autonomy, though still under the Pennsylvania governor. The charter of that year contained remarkable guarantees of religious freedom:

BECAUSE no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences, as to their Religious Profession and Worship: And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith and Worship, who only doth enlighten the Minds, and persuade and convince the Understandings of People, I do hereby grant and declare, That no Person or Persons, inhabiting in this Province or Territories, who shall confess and acknowledge *One* almighty God, the Creator, Upholder and Ruler of the World; and professes him or themselves obliged to live quietly under the Civil Government, shall be in any Case molested or prejudiced, in his or their Person or Estate, because of his or their consciencious Persuasion or Practice, nor be compelled to frequent or maintain any religious Worship, Place or Ministry, contrary to his or their Mind, or to do or suffer any other Act or Thing, contrary to their religious Persuasion.

AND that all Persons who also profess to believe in *Jesus Christ,* the Saviour of the World, shall be capable (notwithstanding their other Persuasions and Practices in Point of Conscience and Religion) to serve this Government in any Capacity, both legislatively and executively, he or they solemnly promising, when lawfully required, Allegiance to the King as Sovereign, and Fidelity to the Proprietary and Governor, and taking the Attests as now established by the Law made at *Newcastle,* in the Year *One Thousand and Seven Hundred,* entituled, *An Act directing the Attests of several Officers and Ministers,* as now amended and confirmed this present Assembly.[271]

BUT, because the Happiness of Mankind depends so much upon the Enjoying of

Liberty of their Consciences, as aforesaid, I do hereby solemnly declare, promise and grant, for me, my Heirs and Assigns, That the *First* Article of this Charter relating to Liberty of Conscience, and every Part and Clause therein, according to the true Intent and Meaning thereof, shall be kept and remain, without any Alteration, inviolably for ever.[272]

In 1776 it became one of the thirteen united colonies and adopted a constitution which required an oath of all elected to office, to provide that the state should be governed by orthodox Christians. The declaration read: "I, A B, do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testaments to be given by divine inspiration."[273] This was the type of oath which Trinitarian Protestants of the time would like. It did not, however, exclude Roman Catholics, as no particular version of the Bible was mentioned, but it did exclude Jews and other non-Christians. There was no religious restriction for voters.

It further provided:

There shall be no establishment of any one religious sect in this State in preference to another; and no clergyman or preacher of the gospel, of any denomination, shall be capable of holding any civil office in this State, or of being a member of either of the branches of the legislature, while they continue in the exercise of the pastoral function.[274]

The new constitution, adopted in 1792, had a preamble to the effect that "Through divine goodness all men, have, by nature, the rights of worshipping and serving their Creator according to the dictates of their consciences, . . ."—a clause continued in the present constitution (1897)—and included the following:

Section 1. Although it is the duty of all men frequently to assemble together for the public worship of the Author of the universe, and piety and morality, on which the prosperity of communities depends, are thereby promoted; yet no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control, the rights of conscience, in the free exercise of religious worship, nor a preference be given by law to any religious societies, denominations, or modes of worship.

Sec. 2. No religious test shall be required as a qualification to any office, or public trust, under this State.[275]

The influence of the Federal Constitution is discernible in the last clause.

(6) PENNSYLVANIA

The following clause was introduced into the constitution of the free and independent state of Pennsylvania in 1776:

II. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.[276]

This statement was in keeping with the best Quaker traditions of Penn's colony. Theoretically it put all religious bodies on the same footing, but actually the Quakers continued for some time to dominate the situation, and as a result there was considerable friction in the western part of the state, where the Presbyterians favored vigorous military defense against the Indians. The statement that religious freedom was "a natural and unalienable right" was significant. It is repeated in the constitutions of North Carolina (1776) and Vermont (1777).

Unfortunately, the constitution of 1776 also included a religious test for office, to the effect that

each member, [of the House of Representatives] before he takes his seat, shall make and subscribe the following declaration, viz: "I do believe in one God, the creator and governor of the universe, the rewarder of the good and punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration."

This admitted Roman Catholics to full rights, and was therefore in this respect more liberal than the requirements of most states at the time.

The next clause reads: "And no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this State."[277]

Franklin presided at this convention. He disapproved of any religious test but accepted this form with the last proviso, which he urged when he saw the majority determined on the first part, as a fairly satisfactory way out of a difficult situation. He feared that if this relatively broad religious test were not adopted something narrower might be imposed later. This point of view was presented in a letter he wrote to Dr. Joseph Priestley, in which he also called

attention to the fact that the test applied exclusively to members of the state Assembly.[278] Even so, its reference to the New Testament was distasteful to the Jews of Philadelphia. In 1783 they petitioned that it be dropped. This was done in the revision of 1790, when all religious requirements for electors were omitted,[279] and it was provided "That no person, who acknowledges the being of a God and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth."[280]

This requirement was repeated in the constitutions of 1838 and 1873.[281] It is still the fundamental law of this most conservative state, as is also the law of 1700 which imposed a penalty upon any who should "wilfully, premeditatedly, and despitefully blaspheme, or speak lightly or profanely of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of Truth."[282]

(7) MARYLAND AND NORTH CAROLINA

Maryland and North Carolina were the next two colonies to organize as states, both in the late autumn of 1776. The debates over religious freedom which resulted were of such national importance that they have been dealt with in separate sections. Suffice it to say here that North Carolina[283] was second only to Virginia in adopting in the year of independence a constitution guaranteeing complete religious freedom; while in Maryland, although the constitution of that year also guaranteed this, the Jews did not attain complete political rights until 1826, and then only after a bitter struggle.[284]

(8) GEORGIA

Georgia will ever be identified with the name of James Edward Oglethorpe (1696–1785), whose primary purpose was to found a colony for debtors. In 1732 he secured a charter, and it was only a few years after it was put into effect that the colony had the Wesleys and Whitefield identified with its interests.

The charter of George II had this statement, enlightened for its time, about freedom of conscience:

> And for the greater ease and encouragement of our loving subjects and such others as shall come to inhabit in our said colony, we do by these presents, for us, our heirs and successors, grant, establish and ordain, that forever hereafter, there shall be a liberty of conscience allowed in the worship of God, to all persons inhabiting, or which shall inhabit or be resident within our said province, and that all such persons, except papists, shall have a free exercise of their religion, so they be contented with the quiet and peaceable enjoyment of the same, not giving offence or scandal to the government.[285]

Georgia on becoming a state during the American Revolution deserves credit

for throwing overboard the derogatory reference to "papists" in its colonial charter and adopting freedom of conscience. The constitution of 1777 provided that "All persons whatever shall have the free exercise of their religion; provided it be not repugnant to the peace and safety of the State; and shall not, unless by consent, support any teacher or teachers except those of their own profession."[286] As was frequently the case in this period, clergymen of all denominations were excluded from the legislature. Members of the House of Assembly—the state legislature—must, however, be "of the Protestant religion," but there was no religious test for voters.[287]

In 1789 a new constitution was adopted. This was drafted the previous year and profited from the debates over the Federal Constitution. The new clause regarding religion read: "All persons shall have the free exercise of religion, without being obliged to contribute to the support of any religious profession but their own."[288] A bicameral legislature was provided for, and there was no religious restriction covering either electors or candidates.

This provision was still further enlarged in the new constitution of 1798:

> Sec. 10. No person within this State shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in a manner agreeable to his own conscience, nor be compelled to attend any place of worship contrary to his own faith and judgment; nor shall he ever be obliged to pay tiths, taxes, or any other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or hath voluntarily engaged to do. No one religious society shall ever be established in this State, in preference to another; nor shall any person be denied the enjoyment of any civil right merely on account of his religious principles.[289]

Georgia was, therefore, early provided with complete religious freedom.

(9) NEW YORK

The constitutional development of religious freedom in the state of New York has been dealt with in a previous section of this chapter.[290]

(10) [VERMONT]*

Vermont held a convention in 1777 and drafted a state constitution which was duly affirmed by the legislature in 1779 and 1782. Its first chapter is "A Declaration of the Rights of the Inhabitants of the State of Vermont," of which Article III is devoted to the cause of religious freedom:

> That all men have a natural and unalienable right to worship ALMIGHTY GOD, according to the dictates of their own consciences and understanding, regulated by the

* Vermont is here included, though not admitted to the Federal Union until after the Federal Constitution was adopted.

word of GOD; and that no man ought, or of right can be compelled to attend any religious worship, or erect, or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man who professes the protestant religion, be justly deprived or abridged of any civil right, as a citizen, on account of his religious sentiment, or peculiar mode of religious worship, and that no authority can, or ought to be vested in, or assumed by, any power whatsoever, that shall, in any case, interfere with, or in any manner controul, the rights of conscience, in the free exercise of religious worship: nevertheless, every sect or denomination of people ought to observe the Sabbath, or the Lord's day, and keep up, and support, some sort of religious worship, which to them shall seem most agreeable to the revealed will of GOD.[291]

This clause was taken almost bodily from the Pennsylvania constitution of 1776 already quoted. Unfortunately, however, it substituted a reference to "the protestant religion" for simple belief in God.

This section remained virtually unchanged in the revisions of 1786 and 1793, except that out of consideration for the few non-Christians in the state the injunction to observe Sunday was imposed not on "every sect or denomination of people" but merely on "every sect or denomination of Christians."[292]

The constitution of 1777 has the following provision for encouraging religion, education, and morals, which was also included in the early revisions referred to:

Section XLI. Laws for the encouragement of virtue and prevention of vice and immorality, shall be made and constantly kept in force; and provisions shall be made for their due execution; and all religious societies or bodies of men, that have or may be hereafter united and incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they, in justice, ought to enjoy, under such regulations, as the General Assembly of this State shall direct.[293]

The supreme legislative power of the state was vested by the same constitution in a House of Representatives. Before taking his seat in this body a member-elect, in accordance with Pennsylvania's precedent of the previous year, was required to subscribe to this declaration: "I do believe in one God, the Creator and Governor of the universe, and rewarder of the good and punisher of the wicked. And I do acknowledge the scriptures of the old and new testament to be given by divine inspiration, and own and profess the protestant religion."[294] The constitution added immediately following this: "And no further or other religious test shall ever, thereafter, be required of any civil officer or magistrate in this State." This would permit Unitarians but exclude Roman Catholics, as well as Jews. It is doubtful whether there were any Jews regularly resident in the state at the time, and there were probably only a few Catholics along the northern boundary.

In 1791 the state was admitted into the Federal Union. It thereupon revised its constitution (1793), retaining the guarantees of freedom of religion, and omitting all religious test oaths.[295] In a word, the state was now put on a satisfactory modern religious-freedom basis.

(11) CONNECTICUT AND MASSACHUSETTS

The early constitutional provisions in these important states have been separately dealt with in another section of this chapter.[296]

(12) RHODE ISLAND

This home of American religious freedom did not immediately adopt a state constitution. It merely continued under the liberal charter of 1663, choosing a governor of its own and drafting laws to meet the new conditions. Hence Rhode Island, when it became a state in 1776, was still under the provisions of the old charter as far as religious freedom was concerned. This read:

And whereas, in theire humble addresse, they have ffreely declared, that it is much on their hearts (if they may be permitted), to hold forth a livlie experiment, that a most flourishing civill state may stand and best bee maintained, and that among our English subjects, with a full libertie in religious concernements; and that true pietye rightly grounded upon gospell principles, will give the best and greatest security to sovereignetye, and will lay in the hearts of men the strongest obligations to true loyaltye: *Now know yee,* that wee beinge willinge to encourage the hopefull undertakeinge of oure sayd loyall and loveinge subjects, and to secure them in the free exercise and enjoyment of all theire civill and religious rights, appertaining to them, as our loveing subjects; and to preserve unto them that libertye, in the true Christian ffaith and worshipp of God, which they have sought with soe much travaill, and with peaceable myndes, and loyall subjectione to our royall progenitors and ourselves, to enjoye; and because some of the people and inhabitants of the same colonie cannot, in theire private opinions, conforms [sic] to the publique exercise of religion, according to the litturgy, formes and ceremonyes of the Church of England, or take or subscribe the oaths and articles made and established in that behalfe; and for that the same, by reason of the remote distances of those places, will (as wee hope) bee noe breach of the unitie and unifformitie established in this nation: Have therefore thought ffit, and doe hereby publish, graunt, ordeyne and declare, That our royall will and pleasure is, that noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of our sayd colony; but that all and everye person and persons may, from tyme to tyme, and at all tymes hereafter, freelye and fullye have and enjoye his and theire owne judgments and consciences, in matters of religious concernments, throughout the tract of lande hereafter mentioned; they behaving themselves peaceablie and quietlie, and not useing this libertie to lycentiousnesse and profanenesse, nor to the civill injurye or outward disturbeance of

others; any lawe, statute, or clause, therein contayned, or to bee contayned, usage or custome of this realme, to the contrary hereof, in any wise, notwithstanding. And that they may bee in the better capacity to defend themselves, in theire just rights and libertyes against all the enemies of the Christian ffaith, and others, in all respects, wee have further thought fit, and at the humble petition of the persons aforesayd are gratiously pleased to declare, That they shall have and enjoye the benefitt of our late act of indempnity and ffree pardon, as the rest of our subjects in other our dominions and territoryes have; and to create and make them a bodye politique or corporate, with the powers and priviledges hereinafter mentioned.[297]

No such liberal provisions will be found in any other American colony or state for over a century, Pennsylvania alone excepted.

In 1842 the state adopted a constitution of its own with declarations true to the best standards of a body politic inheriting Rhode Island's traditions.

We, the people of the State of Rhode Island and Providence Plantations, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and to transmit the same unimpaired to succeeding generations, do ordain and establish this constitution of government. . . .

Sec. 3. Whereas Almighty God hath created the mind free; and all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend to beget habits of hypocrisy and meanness; and whereas a principal object of our venerable ancestors, in their migration to this country and their settlement of this state, was, as they expressed it, to hold forth a lively experiment, that a flourishing civil state may stand and be best maintained with full liberty in religious concernments; we, therefore, declare that no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of his own voluntary contract; nor enforced, restrained, molested, or burdened in his body or goods; nor disqualified from holding any office; nor otherwise suffer on account of his religious belief; and that every man shall be free to worship God according to the dictates of his own conscience, and to profess and by argument to maintain his opinion in matters of religion; and that the same shall in no wise diminish, enlarge, or affect his civil capacity.[298]

Rhode Island is still governed under this constitution adopted a century ago. The clauses quoted remain intact, and in other sections only slight amendments have been made.

The personal contributions of Roger Williams and John Clarke are so memorable and so significant for the United States that they have been dealt with at length elsewhere in these volumes where the history and significance of Rhode Island's contribution to the cause of religious freedom is discussed at some length. It will also be shown how their attitude toward the legal rights of Roman Catholics has been misinterpreted.[299]

We have now dealt with the constitutional provisions of the thirteen original states in the field of religion and religious freedom as these were decided upon in the early days of the republic. A summary of the results, based on Cobb's studies, supplemented from other sources, seems therefore in order:

Two out of thirteen, Virginia and Rhode Island, conceded full freedom;
One, New York, gave full freedom except for requiring naturalized citizens to abjure foreign allegiance and subjection in all matters ecclesiastical as well as civil;
Six, New Hampshire, Connecticut, New Jersey, Georgia, North and South Carolina, adhered to religious establishment;
Two, Delaware and Maryland, demanded Christianity;
Four, Pennsylvania, Delaware, North and South Carolina, required assent to the divine inspiration of the Bible;
Two, Pennsylvania and South Carolina, imposed a belief in heaven and hell;
Three, New York, Maryland, and South Carolina, excluded ministers from civil offices;
Two, Pennsylvania and South Carolina, emphasized belief in one eternal God;
One, Delaware, required assent to the doctrine of the Trinity;
Five, New Hampshire, Massachusetts, Connecticut, Maryland, and South Carolina, insisted on Protestantism;
One, South Carolina, still referred to religious "toleration."[300]

(13) TRANSYLVANIA AND KENTUCKY

It remains to say a word about the short-lived state of Transylvania. On May 23, 1775, a constitutional convention was held in Boonesborough, Kentucky. It was called by Judge Richard Henderson, principal organizer of the Transylvania Company, formed to invest in vacant and unpatented Western lands within the limits covered by the charters of North Carolina and Virginia, and including tracts which were subsequently purchased from the Cherokees. The convention was made up of seventeen backwoodsmen who among other things agreed in their compact to erect courts of justice, regulate the militia, protect game, preserve the breed of horses, and guarantee religious liberty for the abortive "State of Transylvania."[301] In 1776 the title was declared illegal by the Virginia government, which formed Kentucky into a county. As a result of large immigration, the movement for developing the region into an independent state gained headway from 1784 to 1790.

Congress in 1791 admitted Kentucky as a state by an act to take effect the following year. The constitution is notable for a Bill of Rights (Article XII)

drafted by Thomas Jefferson. Its third, fourth, and last sections are here reproduced in full:

3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man of right can be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship.

4. That the civil rights, privileges, or capacities of any citizen shall in no ways be diminished or enlarged on account of his religion.

28. To guard against [the transgression of] the high powers which have been delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void.[302]

The liberal Jeffersonian tradition was to mark the state for several decades.[303]

It will be seen from this state summary that remarkable progress was made in the earliest days of the republic in providing for constitutional freedom of conscience, which was virtually won everywhere; and good progress, though somewhat slower, in eliminating civil disabilities from which members of some religious groups continued to suffer in a few states. It was with these achievements in the field of religious freedom in mind that the synod of the Presbyterian Church in New York and Pennsylvania sent out a pastoral letter in 1783, which said:

There is no doubt that you look upon it as a happy circumstance in the late Revolution, that the rights of conscience are inalienably secured, and even interwoven with the very constitutions of the several States. The duty which you owe to the community at large for this inestimable blessing is to support civil authority, by being subject not only "for wrath, but also for conscience' sake," and by living "quiet and peaceable lives in all godliness and honesty." . . .[304]

We have traced the beginnings of disestablishment and of religious freedom in the original thirteen states, and in Vermont and Kentucky, the first to join them. Early developments in the other states will be dealt with in a later chapter.[305] When the Congregationalists finally capitulated in Massachusetts in 1833, religious freedom had been to all intents and purposes secured as a matter of constitutional right in all parts of the United States. There were a few minor legal injustices that needed to be ironed out, but the victory for complete legal separation between Church and State had been won. Furthermore, as most of the thirteen colonies had originally some State Church it was natural that these, as public institutions, should not be taxed. This privilege was

also gradually extended in colonial times to other churches, and, as it was increasingly realized that the churches rendered a public service, exemption became a regular procedure under the new state constitutions and statutes.[306] Conditions differed at different times, and there were inconsistencies due to historical conditions and local factors, but the above may be taken as in general a fair summary for the Revolutionary period. The general overall picture shows freedom of public worship and religious expression gained everywhere and Church–State separation in most jurisdictions, but with some civil disabilities continued against Roman Catholics, especially as these affected office-holding. This last was difficult to overcome because of the problem involved in papal allegiance. There were also one or two states where Jews were not legally eligible to some public offices.

Chapter VI

THE OFFICIAL ACTS AND UTTERANCES OF THE FOUNDERS REGARDING RELIGION AND RELIGIOUS FREEDOM PRIOR TO THE CONSTITUTION

The conditions existing at the time of the founding of any institution and the point of view of the founders always have an important influence on the institution's ideals and development. Let us therefore now consider the developing Federal government's attitude toward the relation of Church and State and the cause of religious freedom at the time of the Revolutionary War and during the twenty years thereafter. Seventeen official documents and incidents will tell the story; divided almost equally between the periods immediately before and immediately after the adoption of the Constitution. In the first period we notice especially:

1. *Prayers, Thanksgivings, and Chaplaincies at the Founding of the Government (1774 on).* That the Continental Congress and the meetings of the Congress of the United States have always been opened with prayer is significant.

2. *Letters to Inhabitants of Quebec (1774) and Instructions to the First American Diplomatic Mission—to Canada (1776).* This mission was sent to Canada April 2, 1776, under Charles Carroll, to secure the sympathetic attitude of its people in the Revolution. The instructions show that the nation coming into being wished to commit itself, as far as it could without interference with the existing religious arrangements of the thirteen original colonies, to the principle of broad toleration.

3. *Declaration of Independence (1776).* This shows that the leaders of the American independence movement were theists who had been influenced by the Christian idea of brotherhood and were profound believers in freedom.

4. *Assurances to Hessians and Other Possible Settlers (1776).* Congress assured all foreigners leaving the British army to settle in any of the states that they would be "respected in the free exercise of their respective religions."

5. *Adoption of the American Seal and other National Symbols (1776 on).* The designs are evidence of a belief in Divine Providence directing the affairs of the new republic.

6. *Resolutions of Congress Regarding the Bible (1777–82).* These, in view of the national need, authorized an appropriation for the publishing of an American edition. Although this appropriation was not forthcoming, the Congress gave specific encouragement to the printing of the Aitken Bible in Philadelphia, thus showing that the fundamental convictions of the country were Christian.

7. *Articles of Confederation (1778).* The Articles of Confederation are significant in their guaranteeing of the different states against any attack "on account of religion," and because of their laying the foundation of our practice of leaving matters relating to the Churches to the states.

8. *Treaty with the Netherlands (1782) and Other Early Treaties.* These are significant for their mutual guarantees of religious freedom.

9. *Resolutions of Congress Regarding a Proposal of the Church of Rome (1783).* The proposal was to establish a bishop-apostolic in the United States who should be recognized by Congress. The action of Congress shows that the new American State would have no official dealings with the spiritual concerns of any Church.

10. *Ordinance of 1787 for the Government of the Northwest Territory.* This indicates the deep interest of the country in the cause of religious freedom and at the same time its conviction of the vital importance of encouraging religion.

The Bill for Establishing Religious Freedom in Virginia (1786), although of epoch-making significance, has been discussed in connection with the Church–State controversy in Virginia,[1] and is not considered in this section, where we are dealing only with Federal enactments.

The seven remaining actions taking place after the drafting of the Constitution are dealt with in the following chapter (VII).

Section 1. THE PRAYERS, THANKSGIVINGS, AND CHAPLAINCIES AT THE FOUNDING OF THE GOVERNMENT (1774 ON)

The attitude of the founders of the government toward the official recognition of the importance of religion may be derived from many sources. Perhaps the most important are the fundamental charters[2] of the government which they drafted and their attitude toward Congressional prayers and chaplaincies.

Reference to the proposal for a prayer at the opening of the first session of the Continental Congress is found in the official minutes. On Tuesday, September 6, 1774, the second day of the session, it was *"Resolved,* That the Rev[d]. Mr. Duché be desired to open the Congress tomorrow morning with prayers, at the Carpenter's Hall, at 9 o'Clock."[3]

The Reverend Jacob Duché (1737–98) was born in America of Huguenot stock and graduated at the College of Philadelphia, later the University of Pennsylvania. He also studied at Cambridge University, was ordained in England, and at the time of his selection to make the opening prayer in Congress he was rector of Christ Church, Philadelphia. Those mainly responsible for the plan to have the session opened with prayer were Samuel Adams (1722–1803) and Thomas Cushing (1725–88), both delegates from Massachusetts Bay. The former, writing three days later, said:

After settling the mode of voting, which is by giving each Colony an equal voice, it was agreed to open the business with prayer. As many of our warmest friends are members of the Church of England, [I] thought it prudent, as well on that as on some other accounts, to move that the service should be performed by a clergyman of that denomination.[4]

John Adams (1735–1826) tells us that Cushing actually made the motion for prayer, which was opposed by John Jay (1745–1829) and John Rutledge (1739–1800) because of the diversity of religious sentiments in the body, and that then Samuel Adams, a Congregationalist, after asserting that he was no bigot, and could hear a prayer from any gentleman of piety and virtue who was at the same time a friend of his country, nominated Duché.[5] Samuel Adams performed the same type of service in 1788 when the Massachusetts convention was held to ratify the Federal Constitution. John Adams makes this reference to the original incident in a letter to his wife from Philadelphia, September 16, 1774:

Having a leisure moment, while the Congress is assembling, I gladly embrace it to write you a line.

When the Congress first met, Mr. Cushing made a motion that it should be opened with prayer. It was opposed by Mr. Jay, of New York, and Mr. Rutledge, of South Carolina, because we were so divided in religious sentiments, some Episcopalians, some Quakers, some Anabaptists, some Presbyterians, and some Congregationalists, that we could not join in the same act of worship. Mr. Samuel Adams arose and said he was no bigot, and could hear a prayer from a gentleman of piety and virtue, who was at the same time a friend to his country. He was a stranger in Philadelphia, but had heard that Mr. Duché (Dushay they pronounce it) deserved that character, and therefore he moved that Mr. Duché, an Episcopal clergyman, might be desired to read prayers to the Congress, to-morrow morning. The motion was seconded and passed in the affirmative. Mr. Randolph, our president, waited on Mr. Duché, and received for answer that if his health would permit he certainly would. Accordingly, next morning he appeared with his clerk and in his pontificals, and read several prayers in the established form; and then read the Collect for the seventh day of September, which was the thirty-fifth Psalm. You must remember this was the next morning after we heard

the horrible rumor of the cannonade of Boston. I never saw a greater effect upon an audience. It seemed as if Heaven had ordained that Psalm to be read on that morning.

After this, Mr. Duché, unexpected to everybody, struck out into an extemporary prayer, which filled the bosom of every man present. I must confess I never heard a better prayer, or one so well pronounced, Episcopalian as he is. Dr. Cooper himself[6] never prayed with such fervor, such ardor, such earnestness and pathos, and in language so elegant and sublime—for America, for the Congress, for the Province of Massachusetts Bay, and especially the town of Boston. It has had an excellent effect upon everybody here. I must beg you to read that Psalm. If there was any faith in the Sortes Biblicae, it would be thought providential.

It will amuse your friends to read this letter and the thirty-fifth Psalm to them. Read it to your father and Mr. Wibird. I wonder what our Braintree Churchmen will think of this! Mr. Duché is one of the most ingenious men, and best characters, and greatest orators in the Episcopal order, upon this continent. Yet a Zealous friend of Liberty and his country. I long to see my dear family. God bless, preserve, and prosper it. Adieu.[7]

The psalm referred to is, and has been for centuries, a part of the Psalter for the seventh day of the month, "Morning Prayer." It begins with the words: "Plead thou my cause, O Lord, with them that strive with me, and fight thou against them that fight against me."

The minutes of Congress for the day following his opening prayer have this reference to a vote of thanks to the chaplain of the day:

"*Voted,* That the thanks of the Congress be given to Mr. Duché, by Mr. Cushing and Mr. Ward, for performing divine Service, and for the excellent prayer, which he composed and deliver'd on the occasion."[8]

Joseph Reed (1741–85) of Philadelphia, the Revolutionary patriot, who was a witness of the event, thought the appointment and prayer a "masterly stroke of policy."[9] Samuel Ward (1725–76), former Governor of Rhode Island, a member of the convention, said it was "one of the most sublime, catholic, well-adapted prayers I ever heard."[10]

On July 9, 1776, Duché was formally elected chaplain of Congress, but he served only a short time. He devoted his stipend of $150 to the relief of the families of Pennsylvania who lost their lives in battle. On his resignation, two chaplains, one Episcopalian and one Presbyterian, were chosen to succeed him. John Adams, who always seems to take a special interest in the chaplaincies, wrote to his wife from Yorktown, October 25, 1777:

Congress have appointed two chaplains, Mr. White and Mr. Duffield, the former of whom an Episcopalian, is arrived, and opens Congress with prayers every day. The latter is expected every hour. Mr. Duché, I am sorry to inform you, has turned out an apostate and a traitor.[11]

Poor Duché had written that same month to General Washington advising him to abandon a forlorn hope and to "represent to congress the indispensable necessity of rescinding the hasty and ill-advised Declaration of Independence."[12]

The new chaplains were ideal choices. William White (1748–1838) was a beautiful character, afterward Bishop of Pennsylvania, and one of the leaders in the establishment of the Protestant Episcopal Church in the United States. George Duffield (1732–90) was pastor of a Presbyterian church in Philadelphia, who had served as a chaplain during the war. He was an ardent patriot and greatly respected. The chaplains of these early days not only cared for their routine duties in offering prayer at each session, but they delivered sermons, conducted funerals for deceased members, officiated on days of humiliation and thanksgiving, assisted in patriotic celebrations, supervised the preparation and publication of an American Bible, and to some extent acted as "spiritual guides" to the nation coming into being.

The Continental Congress issued four fast-day proclamations prior to its first thanksgiving. They undoubtedly had as a major object the strengthening of the spiritual foundations of colonial union. Of these perhaps the most significant was that issued July 12, 1775, for a fast day in all the united colonies later the same month. This was the first fast day to represent all the colonies that were being molded into a nation. The proclamation, signed "by order of Congress, John Hancock, President," reads:

As the great Governor of the world, by his supreme and universal providence, not only conducts the course of nature with unerring wisdom and rectitude, but frequently influences the minds of men to serve the wise and gracious purposes of his providential government; and it being, at all times, our indispensable duty devoutly to acknowledge his superintending providence, especially in times of impending danger and publick calamity, to reverence and adore his immutable Justice as well as to implore his merciful interposition for our deliverance:

This Congress, therefore, considering the present critical, alarming, and calamitous state of these Colonies, do earnestly recommend that, *Thursday* the twentieth day of July next, be observed by the inhabitants of all the English Colonies on this Continent, as a day of publick humiliation, fasting and prayer; that we may, with united hearts and voices, unfeignedly confess and deplore our many sins, and offer up our joint supplications to the allwise, omnipotent, and merciful Disposer of all events; humbly beseeching him to forgive our iniquities, to remove our present calamities, to avert those desolating judgments with which we are threatened, and to bless our rightful Sovereign, King George the Third, and inspire him with wisdom to discern and pursue the true interest of all his subjects, that a speedy end may be put to the civil discord between Great Britain and the American Colonies, without further effusion of blood; and that the British Nation may be influenced to regard the things that belong to her peace, before they are hid from her eyes; that these Colonies may be ever under

the care and protection of a kind Providence, and be prospered in all their interests; that the divine blessing may descend and rest upon all our civil rulers, and upon the Representatives of the people in the several Assemblies and Conventions, that they may be directed to wise and effectual measures for preserving the union, and securing the just rights and privileges of the Colonies; that virtue and true religion may revive and flourish throughout our land; and that America may soon behold a gracious interposition of her invaded rights, a reconciliation with the Parent state on terms constitutional and honourable to both; and that her civil and religious privileges may be secured to the latest posterity.

And it is recommended to Christians of all denominations, to assemble for publick worship, and to abstain from servile labour and recreation on said day.[13]

It was with reference to this fast day that John Adams, writing to his wife from Philadelphia, said: "We have appointed a Continental fast. Millions will be upon their knees at once before their great Creator, imploring his forgiveness and blessing; his smiles on American Councils and arms."[14]

The next proclamation by the Congress of significance from a Church-State standpoint was under date of November 1, 1777.

FORASMUCH as it is the indispensible Duty of all men to adore the superintending Providence of Almighty God; to acknowledge with Gratitude their Obligation to him for Benefits received, and to implore such farther Blessings as they stand in Need of: And it having pleased him in his abundant Mercy, not only to continue to us the innumerable Bounties of his common Providence; but also to smile upon us in the Prosecution of a just and necessary War, for the Defence and Establishment of our unalienable Rights and Liberties; particularly in that he hath been pleased, in so great a Measure, to prosper the Means used for the Support of our Troops, and to crown our Arms with most signal success:

It is therefore recommended to the legislative or executive Powers of these UNITED STATES, to set apart THURSDAY, the *eighteenth* Day of *December* next, for SOLEMN THANKSGIVING and PRAISE: That at one Time and with one Voice, the good People may express the grateful Feelings of their Hearts, and consecrate themselves to the Service of their Divine Benefactor; and that, together with their sincere Acknowledgements and Offerings, they may join the penitent Confession of their manifold Sins, whereby they had forfeited every Favour; and their humble and earnest Supplication that it may please GOD through the Merits of JESUS CHRIST, mercifully to forgive and blot them out of Remembrance: That it may please him graciously to afford his Blessing on the Governments of these States respectively, and prosper the public Council of the whole: To inspire our Commanders, both by Land and Sea, and all under them, with that Wisdom and Fortitude which may render them fit Instruments, under the Providence of Almighty GOD, to secure for these United States, the greatest of all human Blessings, INDEPENDENCE and PEACE: That it may please him, to prosper the Trade and Manufactures of the People, and the Labour of the Husbandman, that our Land may yield its Increase: To take Schools and

Seminaries of Education, so necessary for cultivating the Principles of true Liberty, Virtue and Piety, under his nurturing Hand; and to prosper the Means of Religion, for the promotion and enlargement of that Kingdom, which consisteth *"in Righteousness, Peace and Joy in the Holy Ghost."*

And it is further recommended, That servile Labour, and such Recreation, as, though at other Times innocent, may be unbecoming the Purpose of this Appointment, be omitted on so solemn an Occasion.

Extract from the Minutes,
CHARLES THOMSON, SECR.[15]

It will be noticed that this contains only a passing reference to the old harvest home custom of earlier days. This did not become prominent in the national proclamations until Lincoln set aside November 26, 1863, during the Civil War, as a day of thanksgiving to God as "the Beneficent Creator and Ruler of the Universe."[16] The 1777 enactment may be considered the first national Thanksgiving Day proclamation. It is noticeable for its Trinitarian statement, almost always omitted in later Federal and state proclamations, so as to make them equally acceptable to all Christians, Jews, and other Theists.

Washington, whose army was then at Valley Forge, referred to the proclamation of the Continental Congress in his orderly book:

Tomorrow being the day set apart by the honorable Congress for Public Thanksgiving and praise, and duty calling us devoutly to express our grateful acknowledgments to God for the manifold blessings he has granted us, the general directs that the army remain in its present quarters, and that the chaplains perform divine service with their several corps and brigades, and earnestly exhorts all officers and soldiers whose absence is not indispensably necessary to attend with reverence the solemnities of the day.[17]

The papers of the Congress have preserved the original proclamation in the handwriting of Dr. John Witherspoon (1723–94),[18] setting aside November 28, 1782, as a day of thanksgiving for the success of the American armies in the Revolution, and specially requesting the authorities of the different states to "command" its observance.

It being the indispensable duty of all nations, not only to offer up their supplications to Almighty God, the giver of all good, for his gracious assistance in a time of distress, but also in a solemn and public manner to give him praise for his goodness in general, and especially for great and signal interpositions of his Providence in their behalf; therefore the United States in Congress assembled, taking into their consideration the many instances of divine goodness to these States, in the course of the important conflict in which they have been so long engaged; the present happy and promising state of public affairs; and the events of the war in the course of the year now drawing to a close, particularly the harmony of the public councils, which is so necessary to the

success of the public cause; the perfect union and good understanding which has hitherto subsisted between them and their allies, notwithstanding the artful and unwearied attempts of the common enemy to divide them; the success of the armies of the United States and those of their allies, and the acknowledgement of their independence by another European power, whose friendship and commerce must be of great and lasting advantage to these States; do hereby recommend it to the inhabitants of these States in general, to observe, and request the several States to interpose their authority in appointing and commanding the observation of Thursday, the twenty-eighth day of November next, as a day of solemn thanksgiving to God for all his mercies; and they do further recommend to all ranks and testify their gratitude of God for his goodness, by a cheerful obedience to his laws, and by protecting, each in his station, and by his influence, the practice of true and undefiled religion, which is the great foundation of public prosperity and national happiness.[19]

Congress also set aside December 11, 1783, as a special day of thanksgiving[20] after the signing of peace with Great Britain. The day appointed by President Washington for thanksgiving after the adoption of the Constitution was Thursday, November 26, 1789. His proclamation and other similar early national proclamations of a religious character are printed in full elsewhere.[21]

Let us turn now from the Continental Congress to the Constitutional Convention. The following statement, from Madison's "Notes," with reference to a proposal made by Benjamin Franklin (1706–90) at a crucial moment in the Federal Convention, namely, June 28, 1787, is interesting because of the light it throws on the point of view of the man at the convention who was generally considered the most skeptical and the least interested in religion. It will be noted that though the matter of a prayer was discussed, no formal action was taken upon it.

Mr. President

The small progress we have made after 4 or five weeks close attendance & continual reasonings with each other—our different sentiments on almost every question, several of the last producing as many noes as ays, is methinks a melancholy proof of the imperfection of the Human Understanding. We indeed seem to feel our own want of political wisdom since we have been running about in search of it. We have gone back to ancient history for models of Government, and examined the different forms of those Republics which having been formed with the seeds of their own dissolution now no longer exist. And we have viewed Modern States all round Europe, but find none of their Constitutions suitable to our circumstances.

In this situation of this Assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings? In the beginning of the Contest with G. Britain, when we were sensible of danger we had daily prayer in this room for the divine protection.

Our prayers, Sir, were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a Superintending providence in our favor. To that kind providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? or do we imagine that we no longer need his assistance? I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth—*that God governs in the affairs of men.* And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings, that "except the Lord build the House they labour in vain that build it." I firmly believe this; and I also believe that without his concurring aid we shall succeed in this political building no better than the Builders of Babel; We shall be divided by our little partial local interests; our projects will be confounded, and we ourselves shall become a reproach and bye word down to future ages. And what is worse, mankind may hereafter from this unfortunate instance, despair of establishing Government by Human Wisdom and leave it to chance, war and conquest.

I therefore beg leave to move—that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of the Clergy of this City be requested to officiate in that service—

Mr. Sherman seconded the motion.

Mr. Hamilton & several others expressed their apprehensions that however proper such a resolution might have been at the beginning of the convention, it might at this late day, 1. bring on it some disagreeable animadversions. & 2. lead the public to believe that the embarrassments and dissentions within the convention, had suggested this measure. It was answered by Docr. F. Mr. Sherman & others, that the past ommission of a duty could not justify a further omission—that the rejection of such a proposition would expose the Convention to more unpleasant animadversions than the adoption of it: and that the alarm out of doors that might be excited for the state of things within, would at least be as likely to do good as ill.

Mr. Williamson, observed that the true cause of the omission could not be mistaken. The Convention had no funds.

Mr. Randolph proposed in order to give a favorable aspect to y^e^. measure, that a sermon be preached at the request of the convention on 4th of July, the anniversary of Independence,—& thenceforward prayers be used in y^e^ Convention every morning. Dr. Frankn. 2ded. this motion After several unsuccessful attempts for silently postponing the matter by adjourng. the adjournment was at length carried, without any vote on the motion.[22]

In a letter written by Madison in his old age to Thomas S. Grimké of South Carolina January 6, 1834, correcting some impressions of Mr. Grimké about the incident, he says:

The proposition was received & treated with the respect due to it; but the lapse of

time which had preceded, with considerations growing out of it, had the effect of limiting what was done, to a reference of the proposition to a highly respectable Committee. This issue of it may be traced in the printed Journal. The Quaker usage, never discontinued in the State & the place where the Convention held its sittings, might not have been without an influence as might also, the discord of opinions within the Convention, as well as among the Clergy of the Spot.[23]

This letter suggests two comments: the reference to a committee, according to Dr. Mugridge, to whose memorandum I am much indebted, does not appear in the place indicated; the Quaker precedent may well have been controlling, since the meeting was in what was then the state capitol and the Quaker City's leading place of public meeting.

It is perhaps unfortunate that one of the delegates did not arise and call attention to the fact that the sessions of the first constitutional convention held in America—that in the little church of Jamestown in 1619—were opened with a prayer to God for guidance. It would have constituted a good precedent.

Madison's views are important, because except for a brief reference by Robert Yates of New York, no other member of the Convention except Franklin referred to the incident. It is worth recording that Madison was a member of the committee of Congress which planned the chaplaincy system in 1789, and that he supported it when president; but later he changed his mind, and in the recently published *Detached Memoranda,* written toward the end of his life, he came out definitely against the system. He asked whether the fact that the chaplains were paid by "the nation" did not involve the principle of a national Establishment forbidden by the Bill of Rights, and also whether, since some groups like the Roman Catholics and Quakers could scarcely be elected to the office, the provision of chaplains by a majority vote were not a palpable violation of civil rights and unfair to minorities.[24]

The custom of having the sessions of our Congress opened with prayer was taken over by the first Congress of the United States from the Continental Congress, and has continued to this day.

On April 7, 1789, the Senate appointed a committee "to take under consideration the manner of electing chaplains, and to confer thereupon with a committee of the House of Representatives."[25] The following committee report was approved on April 15:

That two Chaplains, of different denominations, be appointed to Congress for the present session, the Senate to appoint one, and give notice thereof to the House of Representatives, who shall, thereupon, appoint the other; which Chaplains shall commence their services in the Houses that appoint them, but shall interchange weekly.[26]

The Senate named the Right Reverend Samuel Provost (1742–1815), Episcopal Bishop of New York, on April 25, while the House chose the Reverend

William Linn (1752–1808), a Presbyterian, as its chaplain, as its first business after hearing President Washington's address on May 1. It is significant that of the joint committee of six members which made the chaplaincy proposals, three, Ellsworth, Madison, and Sherman, were all members of the convention which framed the Constitution of the United States and may therefore be trusted to have favored nothing that they did not consider Constitutional. This action of Congress formed the basis of the Act of September 22, 1789, which formally established the chaplaincy by providing that the chaplains' salary should be $500 per annum.[27]

But the early Congressional chaplaincies, although held generally by worthy men, do not seem to have been uniformly successful. For instance, the Reverend Ashbel Green (1762–1848), of the Second Presbyterian Church of Philadelphia and one of the chaplains for eight years from 1792 on, complained of the thin attendance of members of Congress at prayers. He attributed the usual absence of two-thirds to the prevalence of freethinking.[28] Similarly, President Dwight of Yale, speaking in 1813, referred to the fact that the Congressional chaplaincy was not always treated with respect. He said that a short time before Matthew Lyon, a free-lance Congressman from the West known for radical views and a pugnacious disposition, and Thomas Paine, the deist, each received three votes for chaplain of Congress![29] Fortunately, as we shall see when we discuss the development of government chaplaincies, the posts later became dignified, generally held by men of high standing.[30]

The chaplains' duties seem to have remained unchanged for nearly a century. In his "Autobiographical Notes of a Congressional Chaplain" in 1887, Reverend William H. Milburn, 1823–1903, who was chaplain in the House from 1845 to 1846, and again from 1853 to 1855, and in 1885, says that his duties were simple enough:

". . . To open the two Houses of Congress with prayer daily, and to preach in the Hall of Representatives on Sunday morning. There were two of us to perform them. From the foundation of the government until a few years ago the chaplains were chosen under a joint resolution of the two Houses, each electing a man to serve alternately. That rule has now been dropped, and the preaching in the Hall of Representatives has been abolished, by whom I know not, nor for what purpose."[31]

Except for one or two brief periods when there were no elected chaplains and when local clergy of different denominations officiated in turn during the 35th Congress (1858–59), this custom of having regular chaplains open the daily sessions with prayer has been followed for over a century and a half. The long break referred to seems to have been due to the fact that the chaplaincy had fallen into disrepute because the elections were marred by politics. The

Daily National Intelligencer for March 13, 1860, referring to the election of two respected clergymen after this intermission, says:

Two things ought not to go unnoticed in this return to this cherished boon, which has been transmitted to us from the fathers, who, in the language of Franklin, believed that "God governs in the affairs of men." First, that the interregnum was never intended to be an abandonment, but only a suspension of this usage. That the suspension was introduced with the hope of curing an evil which appeared to derive its growth from the growth of the country—namely, that of introducing by the members so many candidates from all parts of the land, and frequently for other reasons than those of adequateness or a due qualification of the great work of being useful as Christian teachers. If it be proper to judge from the results, we are fully to presume that discontinuing to elect chaplains for two years has worked the reform so much desired. . . . Both chaplains . . . like those in the earlier days of the Republic, were elected to Congress because they were known and approved as men of piety and usefulness as Christian ministers—one representing the great Presbyterian and the other the great Methodist family of this country.[32]

The responsibility of chaplains for conducting Sunday services in the capitol and the history of the practice will be discussed later.[33]

Section 2. THE LETTERS TO THE INHABITANTS OF QUEBEC (1774) AND INSTRUCTIONS TO THE FIRST AMERICAN DIPLOMATIC MISSION—TO CANADA (1776)

These instructions were issued in 1776, but to understand them we must go back to the previous year and consider two preliminaries. The first has to do with the so-called address or "Letter to the Inhabitants of Quebec," drafted by John Dickinson (1732–1808) and adopted by the first Continental Congress October 26, 1774. This document, which Bancroft claims to be the sole reference to the subject of religion until the convention of 1787[34]—although the appointment of a Congressional chaplain would seem to make his statement not strictly accurate—is of historic significance.

The address shows a realization of the importance of freedom of conscience.

These are the rights *you* are entitled to and ought at this moment in perfection, to exercise. And what is offered to you by the late Act of Parliament in their place? Liberty of conscience in your religion? No. God gave it to you; and the temporal powers with which you have been and are connected, firmly stipulated for your enjoyment of it. If laws, divine and human, could secure it against the despotic caprices of wicked men, it was secured before. Are the French laws in civil cases restored? *It seems so.* But observe the cautious kindness of the Ministers, who pretend to be your benefactors. The words of the statute are—that those "laws shall be the rule, until they

shall be *varied* or *altered* by any ordinances of the Governor and Council." Is the "certainty and lenity of the *criminal* law of England, and its benefits and advantages," commended in the said statute, and said to "have been sensibly felt by you," secured to you and your descendants? No. They too are subjected to arbitrary *"alterations"* by the Governor and Council; and a power is expressly reserved of appointing "such courts of *criminal, civil,* and *ecclesiastical* jurisdiction, as shall be thought proper." Such is the precarious tenure of mere *will,* by which you hold your lives and religion. The Crown and its Ministers are impowered, as far as they could be by Parliament, to establish even the *Inquisition* itself among you. . . .[35]

We are too well acquainted with the liberality of sentiment distinguishing your nation, to imagine, that difference of religion will prejudice you against a hearty amity with us. You know, that the transcendant nature of freedom elevates those, who unite in her cause, above all such low-minded infirmities. The Swiss Cantons furnish a memorable proof of this truth. Their union is composed of Roman Catholic and Protestant States, living in the utmost concord and peace with one another, and thereby enabled, ever since they bravely vindicated their freedom, to defy and defeat every tyrant that has invaded them. . . .[36]

The letter was an appeal to the Canadians to unite with the colonies to the south of them in securing a redress of their grievances. The sending by them of delegates to the Continental Congress would advance this object.

It is hard to overestimate the significance of this letter as giving "the tone to the religious aspect of the post-Revolutionary period,"[37] and we should hold its author—one of the ablest publicists of the time—in high honor for the broad position which he took in this and other statements of the fundamental principles of English constitutional liberty.[38] Congress could not be consistent unless it ultimately applied to the United States the generous ideals of religious freedom which it advocated for Roman Catholic Canadians.

That political considerations were involved in the address cannot be doubted. The colonists were putting their best foot forward in the hope of gaining allies in the north. This appears in the appeal addressed to the people of Great Britain by the same Congress less than a week earlier in which fear of the Roman Catholic influence in neighboring Quebec comes often to the surface. For example, the delegates complain that by an act

> the dominion of Canada is to be so extended, modelled, and governed, as that by being disunited from us, detached from our interests, by civil as well as religious prejudices, that by their numbers daily dwelling with Catholic emigrants from Europe, and by their devotion to Administration so friendly to their religion, they might become formidable to us, and on occasion be fit instruments in the hands of power, to reduce the ancient free Protestant Colonies to the same state of slavery with themselves.[39]

The Continental Congress in dealing with Catholic Canada showed real

tolerance, but in dealing with the Protestant mother country it did not hesitate to express its fears that too much consideration might be given to a Roman Catholic population!

A significant preliminary step in the interest of religious freedom was taken when, under date of September 14, 1775, Benedict Arnold, who was about to leave with his troops for Canada, was given a letter by George Washington regarding his proper attitude in meeting the sensibilities of the Roman Catholic population of the province of Quebec:

> . . . And as the contempt of the religion of a country, by ridiculing any of its ceremonies, or affronting its ministers or votaries, has ever been deeply resented, you are to be particularly careful to restrain every officer and soldier from such imprudence and folly, and to punish every instance of it. On the other hand, as far as it lies in your power, you are to protect and support the free exercise of the religion of the country, and the undisturbed enjoyment of the rights of conscience in religious matters with your utmost influence and authority.[40]

This statement is with justice emphasized by Roman Catholic historians. There is another passage in the same document not so frequently cited. It reads:

> . . . I also give it in charge to you to avoid all disrespect of the religion of the country, and its ceremonies. Prudence, policy, and a true Christian spirit, will lead us to look with compassion upon their errors without insulting them. While we are contending for our own liberty, we should be very cautious not to violate the rights of conscience in others, ever considering that God alone is the judge of the hearts of men, and to him only in this case they are answerable. . . .[41]

These instructions to Arnold formed the basis of more detailed and important instructions given by the Continental Congress to the members of the diplomatic mission to Canada appointed in February, 1776. This distinguished group consisted of Charles Carroll (1737–1832) of Carrollton, the signer; the Reverend John Carroll (1735–1815), later first Bishop of Baltimore; Benjamin Franklin (1706–90); and Samuel Chase (1741–1811). Their instructions, drafted by a committee consisting of John Adams (1735–1826), George Wythe (1726–1806), and Roger Sherman (1721–93), are highly significant as preparing the way for the constitutional provisions of the next fifteen years:

> You are further to declare that we hold sacred the rights of conscience and may promise to the whole people, solemnly in our name, the free and undisturbed exercise of their religion; and, to the clergy, the full, perfect and peaceable possession and enjoyment of all their estates. That the government of everything relating to their religion and clergy, shall be left entirely in the hands of the good people of that province and such legislature as they shall constitute: provided, however, that all other de-

nominations of Christians be equally entitled to hold offices and enjoy civil privileges and the free exercise of their religion and be totally exempt from the payment of any tythes or taxes for the support of any religion.[42]

To understand these references it must be remembered that at this period it was hoped by many leaders of public opinion in the United States that Canada would join the confederation. Indeed, in the Articles of Confederation, as finally adopted in 1778, specific provision was made for this possibility in Articles X and XI. If this purpose was to be consummated it was essential that the Roman Catholic inhabitants of Canada, which had been under France until the Treaty of Paris in 1763 after Wolfe's victory at Quebec, be assured that their religion and their churches would be respected, and yet at the same time that the increasing English Protestant population need have no fear of losing its religious freedom.

Section 3. THE DECLARATION OF INDEPENDENCE (1776)

The Declaration of Independence (resolution passed, July 2; Jefferson draft adopted July 4; signed, August 2, 1776) was prepared at a time when the religious life of the United States was at a rather low ebb. The forces of the Great Awakening in the middle of the century had largely spent themselves, and another quarter of a century was to pass before a similar religious movement was to quicken the life of the American people. It was also a time when the writings of the French Encyclopedists and the English deists had a strong influence in intellectual circles, especially in Boston, Virginia, and Philadelphia —in many respects the leading centers of the independence movement. In spite of this fact the Declaration of Independence is of itself an evidence of the large degree in which Christian theism and Christian social ideals had been accepted by the founders of the republic. A well-known constitutional lawyer of the mid-nineteenth century, Sen. Matthew Hale Carpenter of Wisconsin (1824–81), saw this clearly. Speaking of the Declaration, which he called "the corner-stone of our nationality," he said that it "was man's first attempt to introduce the liberality of Christian principle into the framework of civil government."[43]

There are four references to God in the Declaration. He is referred to as "Nature's God," the "Creator," the "Supreme Judge of the world," and "Divine Providence." The phraseology is, of course, that with which we are familiar from the other writings of Thomas Jefferson. Without these references the significance of the opening words of the Constitution—"We the People of the United States" —is largely lost. The people themselves, not an inherited ruler or any form of government, are supreme in the political field because they have a divine birthright. This truth, with its application to human rights, emphasized by Christian

exponents of the natural law,[44] is brought out more clearly in the second paragraph of the Declaration. Many thoughtful students of our government, such as the author of the *Life of John Marshall,* the late Honorable Albert J. Beveridge, have linked this with the Bill of Rights as representing one of the most important guarantees of freedom we possess: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Abraham Lincoln commented in his message to Congress, July 4, 1861, on the significance of the omission of this reference to the basic equality of men from some of the declarations of independence adopted by the states of the Confederacy.[45]

The ideal of the Declaration is of course a definitely Christian one, and when considered along with the references to the Deity, it shows that the two most fundamental Christian teachings, those of our duties toward God and toward our neighbor, permeate the document.

The phrase about equality has been variously interpreted. No intelligent person believes that Jefferson thought that all individual men had actually the same abilities, but rather that they were all equally of the same species—mankind—and consequently had latent human capacities and sacred inherent rights. This is doubtless why he favored the abolition of slavery and why he believed in democracy. One of his intimate friends and coworkers, Thomas Paine (1737–1809),[46] has given us a contemporary description of what was meant by human equality that seems specially significant. In his *Rights of Man* he says:

> Every history of the creation, and every traditional account, whether from the lettered or unlettered world, however they may vary in their opinion or belief of certain particulars, all agree in establishing one point, the *unity of man;* by which I mean that man is all of *one degree,* and consequently that all men are born equal, and with equal natural rights, in the same manner as if posterity had been continued by *creation* instead of generation, the latter being only the mode by which the former is carried forward; and consequently, every child born into the world must be considered as deriving its existence from God. . . .[47]

This is one of the most illuminating explanations I have seen of a phrase in the Declaration of Independence that has caused commentators some difficulties.

Jefferson clearly got this idea, which however was unfortunately not interpreted at the time as necessarily excluding slavery, mainly from writers like Locke, who said that "God made all men naturally equal,"[48] and Algernon Sidney (1622–83), and secondarily from some of the French Encyclopedists. We have seen elsewhere that it is not today considered that Cardinal Bellar-

mine had any direct influence on the document.[49] Monsignor Fulton Sheen (1895–), in an address delivered at the Chaplains' Association Convention in 1938, after calling attention to what he believed to be this connection, said:

> Man's right to own private property, man's right to educate his own family, man's right to adore God according to the dictates of his conscience, comes not from the Constitution, the Government, Parliament, nor the will of the majority, but from God. Therefore no power on earth may take these rights away. This is the essence of Americanism. . . . The essence of Americanism is the sacredness of human personality as created by God. . . .
>
> The ultimate source of man's rights is God; the proximate source is the soul of man. Only a man has rights in this world, and he has rights because he has a rational soul which can determine ends. . . . That is the philosophy which is back of the Declaration of Independence.[50]

It is worthy of note that in the listing of the grievances which made the independence movement necessary no reference is made to the Church. The reason for this is that most of the church establishments which existed in the United States were not imposed by the English government. During the major part of the time that Congregationalism was an Established Church in Massachusetts and Connecticut, the Church of England was in power in the homeland and all attempts to alter the situation in New England proved abortive. Even in the Southern colonies where Anglicanism was established, this was not always due to the action of the British government but to that of a proprietary. Speaking generally, each colony had the religious affiliation that its leaders of public opinion and the majority, or at least the plurality, of its citizens wished. Therefore from the standpoint of religious liberty, especially when the relatively small progress in this field abroad at the time is considered, there was little effective grievance against the home government on the part of Protestants, unless its friendly attitude toward Canadian Catholics may be so considered. Undoubtedly, however, the Baptists and Presbyterians in the South and the Baptists and Episcopalians in the North, to take two examples, wanted a degree of religious toleration which the established *colonial* governments in America would not give them. Furthermore, the Roman Catholics were legally disfranchised in all the colonies, in keeping with the situation in England, and only in Pennsylvania and Rhode Island had anything like adequate religious freedom and civic status. The only Catholic signer of the Declaration, Charles Carroll of Carrollton (1737–1832), declared in his old age that he had signed the document to bring about the toleration of all Christians.[51] This may well have been one of the objects in his mind. Religious freedom was, indeed, a natural, almost inevitable, result of independence, but it is doubtful whether it played any large part in the minds

of many delegates. Carroll's letter is, however, worthy of full quotation, as it breathes a fine spirit and was written by the leading American Catholic layman of his time. It is dated October 9, 1827, and is addressed to the Reverend John Stanford, a Baptist minister of New York.

I was yesterday favored with your friendly letter of the 10th past, and the discourses on the opening of the House of Refuge and on the death of Jefferson and Adams. The former I have not yet read. With the latter I am highly pleased and I sincerely thank you for your pious wishes for my happiness in the life to come. Your sentiments on religious liberty coincide entirely with mine. To obtain religious, as well as civil liberty, I entered zealously into the Revolution, and observing the Christian religion divided into many sects, I founded the hope that no one would be so predominant as to become the religion of the State. That hope was thus early entertained, because all of them joined in the same cause, with few exceptions of individuals. God grant that this religious liberty may be preserved in these States, to the end of time, and that all believing in the religion of Christ may practice the leading principle of charity, the basis of every virtue.[52]

The Declaration of Independence, adopted by the Second Continental Congress, may therefore be accepted as evidence that the founders of the country, although most of them were neither catholic, in the historic sense of the word, in their theology, nor evangelical in their attitude, were sympathetic with the fundamental theistic belief and with the moral and social teachings of the Gospels. Nearly all the signers were church members. Episcopalians, mostly from the South, had a clear majority, with Congregationalists and Presbyterians in that order. The exact distribution of the fifty-six actual signers[53] is interesting and important.

The *Episcopalians,* thirty-four in number, included all the signers from North and South Carolina and Virginia; a majority of those from Delaware, Georgia, Maryland, New York, and Pennsylvania; and one each from Massachusetts and New Jersey.

The Congregationalists, thirteen in number, included all from Connecticut and New Hampshire; all but one from Massachusetts; and one each from Georgia and Rhode Island.

The *Presbyterians,* six in number, included all but one from New Jersey, and others from the middle states.

The one *Baptist* was from New Jersey; the one *Quaker,*[54] from Rhode Island; and the one *Roman Catholic,* from Maryland.

We are surprised to find no signer from the *Dutch Reformed Church,* which was so prominent in New York and New Jersey. Philip Schuyler, chosen to the second Continental Congress in 1775, and a member of this Church, would

doubtless have been one had not his duties with the Army kept him in the north.

Of the actual signers seven are buried at Christ Church (Episcopal), Philadelphia, one of our oldest parishes (founded in 1695) and church buildings (begun in 1727), and one of the most interesting of the religious shrines of the nation. Its location within a few blocks of Independence Hall; the fact that for over half a century its pulpit was occupied by the Reverend William White, the honored chaplain of the Continental Congress during the years when the republic was coming into being, and that George Washington, Benjamin Franklin, and other "founding fathers" had pews there, when Philadelphia was capital of the nation, as well as its association with Congress which on several occasions resorted to it for special services, have won for it the designation of "Cathedral of Democracy."

It is interesting to note that at the time of the signing there were already seventeen Christian denominations in the United States besides Judaism. It has been estimated that 80 per cent of the church members were divided among five denominations—Congregationalists, Presbyterians, Episcopalians, Baptists, and Friends. There were five synagogues. The Roman Catholic population was very small—not one per cent of the total—and mostly in Maryland.

The Declaration was not only an epoch-making document in the sphere of politics, but it was almost as important in its implications for religion because of its assertion that man, as such, has derived from his Maker certain rights which are basic, and which no government can either give or take away. Its direct and indirect influence on freedom, including religious freedom, was large. As one signer (Roman Catholic) wrote, "When I signed the Declaration of Independence I had in view, not only our independence from England, but the toleration of all sects professing the Christian religion, and communicating to them all equal rights."[56]

Much attention has been given to the broad religious significance of the Declaration, since it is virtually part of American law. Witness, for example, the opinion of the Court of Appeals of the District of Columbia delivered in connection with an important case in 1899:

> The Declaration of Independence is not, as has sometimes been flippantly asserted, a mere string of glittering generalities. It is a bill of rights which enters fundamentally into the structure of our Government; and the one great fundamental truth, which it seeks to enforce, is the doctrine of the equality of all men before the law. That doctrine is not again proclaimed in our Federal Constitution. It is nowhere referred to in the Constitution before the adoption of the Fourteenth Amendment. But in that Amendment it was assumed as a cardinal principle of our republican institutions, and it was

made obligatory upon the States, as such, that they "should not deny to any person within their jurisdiction the equal protection of the laws." Without the equal protection of the laws republican institutions can not exist.[57]

In the same opinion the court, having listened to a strong statement by counsel as to the importance of the Fourteenth Amendment as a limitation upon the power of the states and consequently a guarantee of liberty, reiterated one of the fundamental doctrines of the Declaration by saying "There is no place in our governmental system for arbitrary or unlimited power. . . ."[58]

Section 4. THE ASSURANCES TO THE HESSIANS AND OTHER POSSIBLE SETTLERS (1776)

The Continental Congress showed on several occasions its interest in the foreign mercenaries fighting for Great Britain. It wanted to persuade them to desert from the royalist army, and saw in them good material for American citizenship. They were practically all Germans, of whom there were nearly thirty thousand officers and men—about one-third of the land forces fighting for the king in North America.[59] Slightly more than half of these came from Hesse-Cassel; the rest from Brunswick and other German principalities. They included Calvinists, Lutherans, and Roman Catholics, and the Congress wished to assure them all religious freedom.

The *Journal* of the Congress for August 14, 1776, deals with this matter in a way that indicates the tolerant views that were then developing in the colonies:

> The committee appointed to devise a plan for encouraging the Hessians, and other foreigners, to quit the British service, brought in a report, which was taken into consideration; whereupon, Congress came to the following resolution:
>
> Whereas it has been the wise policy of these states to extend the protection of their laws to all those who should settle among them, of whatever nation or religion they might be, and to admit them to a participation of the benefits of civil and religious freedom; and, the benevolence of this practice, as well as its salutary effects, have rendered it worthy of being continued in future times.
>
> And whereas, his Britannic majesty, in order to destroy our freedom and happiness, has commenced against us a cruel and unprovoked war; and, unable to engage Britons sufficient to execute his sanguinary measures, has applied for aid to foreign princes, who are in the habit of selling the blood of their people for money, and from them has procured and transported hither considerable numbers of foreigners. And it is conceived, that such foreigners, if apprised of the practice of these states, would choose to accept of lands, liberty, safety and a communion of good laws, and mild government, in a country where many of their friends and relations are already happily settled, rather

than continue exposed to the toils and dangers of a long and bloody war, waged against a people, guilty of no other crime, than that of refusing to exchange freedom for slavery; and that they will do this the more especially when they reflect, that after they have violated every Christian and moral precept, by invading, and attempting to destroy, those who have never injured them or their country, their only reward, if they escape death and captivity, will be a return to the despotism of their prince, to be by him again sold to do the drudgery of some other enemy to the rights of mankind.

And whereas, the parliament of Great-Britain have thought fit, by a late act, not only to invite our troops to desert our service, but to direct a compulsion of our people, taken at sea, to serve against their country:

Resolved, Therefore, that these states will receive all such foreigners who shall leave the armies of his Britannic majesty in America, and shall choose to become members of any of these states; and they shall be protected in the free exercise of their respective religions, and be invested with the rights, privileges and immunities of natives as established by the laws of these states; and, moreover, that this Congress will provide, for every such person; fifty acres of unappropriated lands in some of these states, to be held by him and his heirs in absolute property.

Resolved, That the foregoing resolution be committed to the committee, who brought in the report, and that they be directed to have it translated into German, and to take proper measures to have it communicated to the foreign troops.[60]

Here was a definite assurance of religious freedom within the United States from the highest governmental authority. The reference by Congress in this year of independence to "civil and religious freedom" is particularly significant. This phrase is found repeatedly in the writings of George Washington[61] and in other official documents and addresses of the Revolutionary and early republican periods, showing that the Founding Fathers considered them indissoluble. The revolution is also notable for its implication that "Christian" moral standards should control judgments and actions.

Section 5. THE ADOPTION OF THE AMERICAN SEAL AND OTHER NATIONAL SYMBOLS (1776 ON)

On July 4, 1776, the Continental Congress appointed Benjamin Franklin, John Adams, and Thomas Jefferson "a Committee to prepare a device for a Seal of the United States of America."[62] It is interesting to note that, with the exception of the omission of Roger Sherman and Robert Livingston, this was the same committee which drafted the Declaration of Independence. As the committee could not adopt the seal of any individual or royal house, it seemed to it that some allegorical design significant of the fortunes and destiny of the United States would be appropriate.[63] Franklin proposed as the device Moses lifting up his wand and dividing the Red Sea while Pharaoh was overwhelmed

by its waters, with the motto "Rebellion to tyrants is obedience to God."[64] Jefferson proposed the children of Israel in the wilderness "led by a cloud by day and a pillar of fire by night." Adams suggested Hercules with Virtue persuading him to ascend her rugged mountain.[65]

The committee reported what was in essence Jefferson's proposal for one side, and for the other side arms derived from characteristic features of England, Scotland, Ireland, France, Germany, and Holland—the countries from which the states had been mainly peopled; escutcheons for each of the thirteen states; together with the Goddess of Liberty and the Goddess of Justice as supporters; and a crest showing "The Eye of Providence in a radiant Triangle whose Glory extends from the Shield and beyond the Figures." The motto was to be *E Pluribus Unum*.[66] This seems to go back to Virgil's *Moretum;* and it was also used by St. Augustine in his *Confessions*.[67] It has no particular religious significance, but it is extraordinarily appropriate as applying not only to the national unity of the different states, but to the similar spiritual unity of their inhabitants—partly achieved and partly sought—in spite of differences of race, status, and religion.

It is interesting to note the religious implications of this first design for the seal, even though only two features of it, namely, the "Eye of Providence" and the motto, were preserved in the finally approved design. The report of the first committee on the seal and of the second committee were both recommitted. The seal, which is still in the form decreed over a century and a half ago by the Continental Congress, was not finally adopted until 1782, and then after the secretary of the Congress, Charles Thomson (1729–1824), a scholar known as the author of the first English translation of the Septuagint, had worked over it. In the final report of the secretary, approved by Congress, the following reference to Providence was made: "Reverse. The pyramid signifies Strength and Duration: The Eye over it & the Motto allude to the many signal interpositions of providence in favour of the American cause."[68] This is marked by the words referring to the divine aid: *annuit coeptis.*

Nearly the same idea is depicted on the dollar bill still in general circulation, for above the pyramid representing the thirteen original colonies is the all-seeing eye of Jehovah surrounded by a cloud of glory symbolizing the protecting Divine Presence.

The story of the seal is interesting as corroborating the manifold evidence that the founders of the nation were believers in the guidance of God and wished to give expression to this faith. The same thought was emphasized in the great seal of the Confederate States issued by their Congress April 30, 1863. This bore the motto *Deo Vindice*. State seals and mottoes show a similar tendency to recognize God. One state, Colorado, has adopted the "All-Seeing

Eye" on its seal, with the motto *Nil sine numine*. The first state to be organized, Virginia, originally planned as its motto *Deus nobis haec otia fecit*,[69] but later *Sic semper tyrannis* was substituted; while six other states, namely, Arizona, Colorado, Connecticut, Florida, Maryland, and South Dakota, have references to the Deity or to Divine Guidance in their mottoes. These are:

Arizona—*Ditat Deus*, God enriches
Colorado—*Nil sine Numine*, Nothing without God
Connecticut—*Qui transtulit Sustinet*, He who has brought over sustains
Florida—In God we Trust
Maryland—*Scuto Bonae Voluntatis Tuae Corononasti Nos*, With a shield of thy good-will hast Thou encompassed us (*cf.* Ps. 5.12).
South Dakota—Under God the People Rule.[70]

It will be noticed that these states are in different parts of the country and were established at different periods.[71] The case of Arizona is specially interesting, being a state in the Southwest admitted late (1912) to the Union.

On June 14, 1777, Congress resolved "that the flag of the thirteen united States be thirteen stripes alternate red and white: that the Union be thirteen stars, white in a blue field representing a new constellation.."[72] In 1794, on the admission of Vermont and Kentucky, the number of stars and stripes was increased to fifteen. Then in 1818 Congress, seeing the dilemma the nation was facing by the addition of new states, wisely adopted the plan suggested by Samuel Chester Reid (1783–1861), a naval hero of the War of 1812, to have the number of stripes reduced to thirteen to perpetuate forever the states that formed the original union, and to add a new star for each new state. This gives the history, traditions, and ideals of the "old thirteen" a place of enduring recognition, while at the same time calling to mind by the stars the importance of every state in the Union.

The design of the flag was evidently taken from the coat of arms of the Washington family. As to the origin of this there is some doubt. Some authorities trace its ancestry back to the blue, scarlet, and white cloth on the table of shewbread before the ark of the covenant. They believe that these colors of the early Jewish Church were taken over by Christendom and used for the main colors of the flags of Christian nations. In this connection Zollmann quotes the superintendent of naval records and librarian of the United States Navy Department as saying:

The flag may trace its ancestry back to Mount Sinai whence the Lord gave to Moses the Ten Commandments and the book of the Law, which testify of God's will and man's duty, and were deposited in the Ark of the Covenant within the Tabernacle whose curtains were blue, purple, scarlet, and fine twined linen. Before the Ark stood

the table of shew breads, with its cloth of blue, scarlet and white. These colors of the Jewish church were taken over by the early Western Church for its own and given to all the nations of Western Europe for their flags. When the United States chose their flag, it was of the colors of old, but new in arrangement and design.[73]

This is merely a matter of opinion. It is a case where proof is extremely difficult, if not impossible. Red has always been the color of sacrifice; blue the symbol of constancy, the color of the heavens, and consequently of the glory of God; and white of purity. Whether it is possible to go beyond this in the identification of the colors of our flag, seems doubtful.

Professor Charles Beard has called my attention to the fact that the United States was probably the first great nation to leave out from the design of its flag any specific religious or authoritarian symbolism. For example, it does not contain the cross on the one hand, or the fasces or sword on the other. It is inspiring because of its intrinsic beauty of design and color; its historic representation through its stripes of the formation of the government by the thirteen original states; its representation by the white stars in the blue field of the diversity in unity of the forty-eight existing states; and its reminder of the family of George Washington by its adaptation of the general design of his family's arms.

It is perhaps worth mentioning that nearly all our historic patriotic songs and anthems have a spiritual note and refer to the Deity. I have in mind the "Star-Spangled Banner," inspired by the American flag in the War of 1812 and adopted as the national anthem in 1931; "Once to every man and nation," "O God, beneath Thy guiding hand," "God bless our native Land," "God of our fathers, Whose almighty hand," the "Battle Hymn of the Republic," "America the beautiful," and "America," "My country, 'tis of thee." The last named, which is still by far the most popular, was written in 1832 by Samuel F. Smith (1808–1895), then a young theological student.

Section 6. THE RESOLUTIONS OF CONGRESS REGARDING THE BIBLE (1777–82)

One of the early acts of Congress under the Articles of Confederation was to secure an American edition of the Bible.

The movement for Federal aid to meet the lack of Bibles in the colonies took form in 1777, when a resolution actually passed Congress, on September 11, to instruct the Committee on Commerce "to import 20,000 copies." This proposal for importation was adopted in place of an earlier suggestion to have the Bibles printed in this country, so as to save money, as it was found that to buy type and paper abroad for 30,000 copies, the number originally

considered, would cost £10,272 10 *s.* The grounds on which the proposal were advanced were moral and patriotic; and it was particularly significant, as a later Congressional report shows, that at the time of this action the American Army was actually fighting the British at Brandywine.[74]

The *Journals* of Congress show clearly the action on the petition from Dr. Patrick Allison (1740–1802), pastor of the First Presbyterian Church in Baltimore, and others. The committee to which it was referred reported September 11, 1777:

> The committee to whom the memorial of Dr. Allison and others was referred, report, "That they have conferred fully with the printers, &c., in this city, and are of opinion, that the proper types for printing the Bible are not to be had in this country, and that the paper cannot be procured, but with such difficulties and subject to such casualties, as render any dependence on it altogether improper: that to import types for the purpose of setting up an entire edition of the bible, and to strike off 30,000 copies, with paper, binding, &c. will cost £10,272 10, which must be advanced by Congress, to be reimbursed by the sale of the books: that, in the opinion of the committee, considerable difficulties will attend the procuring the types and paper; that afterwards, the risque of importing them will considerably enhance the cost, and that the calculations are subject to such uncertainty in the present state of affairs, that Congress cannot much rely on them: that the use of the Bible is so universal, and its importance so great, that your committee refer the above to the consideration of Congress, and if Congress shall not think it expedient to order the importation of types and paper, the committee recommend that Congress will order the committee of commerce to import 20,000 Bibles from Holland, Scotland, or elsewhere, into the different ports of the states of the Union:"
>
> Whereupon, it was moved, That the committee of commerce be directed to import 20,000 copies of the Bible.[75]

On this motion, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, and Georgia, voted in the affirmative; New York, Delaware, Maryland, Virginia, North Carolina, and South Carolina, in the negative. "So it was resolved in the affirmative."[76] As, however, the margin in favor of the resolution was a single vote, it seemed wise to have the matter reconsidered, with the result that no final action was taken. In 1780, as the demand had not been met, the following resolution was adopted:

> That it be recommended to such of the States who may think it convenient for them that they take proper measures to procure one or more new and correct editions of the Old and New Testament to be printed and that such states regulate their printers by law so as to secure effectually the said books from being misprinted.[77]

In the meantime, Robert Aitken (1734–1802),[78] a patriotic printer of Philadelphia and an elder in the Presbyterian Church, had published in 1777 a copy

of the New Testament. In 1781 he urged upon Congress that it give moral and financial support to his project for a complete American edition of the Bible, of which none had appeared except John Eliot's remarkable Bible for the Indians in the Algonquin language (Cambridge, 1663) and the Bibles printed by Christopher Sauer (Sower) and his son of the same name in the German language in Germantown, Pennsylvania, from 1743 to 1776. Hoping for government support Aitken had gone ahead with his work.

The author happens to be the owner of a copy of this rare Bible. On the two pages after the title occur quotations from the records of Congress regarding it. They form one of the most interesting evidences of the fact that the founders of the republic, although determined to keep Church and State separate, at least as far as the Federal government was concerned, were deeply interested in the cause of religion. The Congress arranged that the only American printed copies of the English Bible in existence at the time should bear the definite stamp of government approval. Here is the endorsement.

By the United States in Congress Assembled:
September 12th, 1782.

The Committee to whom was referred a Memorial of Robert Aitken, Printer, dated 21st January, 1781, respecting an edition of the Holy Scriptures, report, "That Mr. Aitken has, at a great expence, now finished an American edition of the Holy Scriptures in English; that the Committee have from time to time attended to his progress in the work; that they also recommended it to the two Chaplains of Congress to examine and give their opinion of the execution, who have accordingly reported thereon; the recommendation and report being as follows:

"Philadelphia, 1st September, 1782.

"Reverend Gentlemen

"OUR knowledge of your piety and public spirit leads us without apology to recommend to your particular attention the edition of the Holy Scriptures publishing by Mr. Aitken. He undertook this expensive work at a time when, from the circumstances of the war, an English edition of the Bible could not be imported, nor any opinion formed how long the obstruction might continue. On this account particularly he deserves applause and encouragement. We therefore wish you, Reverend Gentlemen, to examine the execution of the work, and if approved, to give it the sanction of your judgment, and the weight of your recommendation.

We are, with very great respect,
Your most obedient humble servants.
(Sign'd) JAMES DUANE, Chairman in behalf
of a Committee of Congress on Mr. Aitken's Memorial.

Reverend Doct. White and Revd. Mr. Duffield,
Chaplains of the United States in Congress assembled.

Report.

Gentlemen,

AGREEABLY to your desire we have paid attention to Mr. Robert Aitken's impression of the Holy Scriptures of the Old and New Testament. Having selected and examined a variety of passages throughout the work, we are of opinion that it is executed with great accuracy as to the sense, and with as few grammatical and typographical errors as could be expected in an undertaking of such magnitude. Being ourselves witnesses of the demand for this invaluable book, we rejoice in the present prospect of a supply; hoping that it will prove as advantageous as it is honorable to the Gentleman, who has exerted himself to furnish it, at the evident risque of private fortune. We are, Gentlemen,

Your very respectful and humble servants,

(Sign'd) WILLIAM WHITE,
GEORGE DUFFIELD.

Philadelphia, September 10th, 1782.

Honble James Duane, Esq. Chairman, and the other
Honble Gentlemen of the Committee of Congress on
Mr. Aitken's Memorial.

Whereupon,

RESOLVED,

THAT the United States in Congress assembled highly approve the pious and laudable undertaking of Mr. Aitken, as subservient to the interest of religion, as well as an instance of the progress of arts in this country, and being satisfied from the above report of his care and accuracy in the execution of the work, they recommend this edition of the Bible to the inhabitants of the United States, and hereby authorize him to publish this Recommendation in the manner he shall think proper.

CHA. THOMSON, Sec'ry.

The Congress of the United States gave no financial aid to the project, although in the same year that this resolution was passed the Pennsylvania Assembly—due largely to the interest in the matter of John Witherspoon[79]—advanced Mr. Aitken $700 to complete the work. This Bible is now a rare Americanum and greatly sought after. Only about seventy-five copies are known to exist.

In keeping with this action of Congress encouraging the use of the Bible may be quoted the fact that in 1815 it remitted the duty on certain stereotype plates being imported from England by one of the Bible societies.[80]

It is also not without significance that the *Bay Psalm Book* of 1640, the first book printed in this country, was given a prominent place in the government-sponsored collection of the Freedom Train in 1947; for the Bible is unquestionably one of the major sources of American freedom and democracy.

Section 7. THE ARTICLES OF CONFEDERATION (1778)

Congress approved, November 15, 1778, the Articles of Confederation adopted by the thirteen original colonies—Rhode Island and Providence being considered one for our purposes. Thus the United States of America came into existence. Article III bound the different states in the interest of "the security of their Liberties . . . to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever."[81] This was virtually a guarantee to each state of the integrity of its religion or of its religious freedom. It meant, for instance, the probable dominance of Congregationalism in Massachusetts, Episcopalianism in Virginia, and religious liberty in Rhode Island. It also meant that if Quebec should join the confederation, as was hoped, its Roman Catholicism would be protected.[82]

The Articles also specifically guaranteed state rights—a matter of great importance to those who wished to retain their religious establishments along with a growing measure of religious freedom. Article II stated: "Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."[83] The substance of this article is embodied in Article X of the Bill of Rights, although by the time of its adoption the states under the Federal Constitution had given up some of their powers. It was because the Federal Constitution, as originally adopted, was not sufficiently specific on these state powers and liberties that several states were loath to accept it until the Bill of Rights was guaranteed.

In the Articles of Confederation as ratified by Congress "in the Year of our Lord one Thousand seven Hundred and Seventy-eight" there is this reference to the Deity:

> And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. . . .[84]

What the Congress under the Articles of Confederaton thought of the significance of religion is shown by the terms of its action in passing the Ordinance of 1787 for the government of the Northwest Territory, stressing its

importance as well as that of religion freedom. This followed the ordinance passed in 1785 establishing the rectangular system for the public lands of the West and setting apart Lot Number 29 in every township for the support of religion.[85]

The growing liberality in matters of religion during the period of the Continental Congress is shown by the fact that there were special occasions during its sessions when many of its Protestant members attended Catholic services. For instance, on July 2, 1779, the Minister Plenipotentiary of France invited the president and members of the Congress to attend a *Te Deum* to celebrate the anniversary of the Declaration of Independence. Similarly, in 1780 when the Spanish envoy died, a solemn requiem mass was held at St. Joseph's Church, Philadelphia, on May 4. Ebenezer Hazard (1744–1817), in a letter to Dr. Jeremiah Belknap, refers to this service as

> the most striking instance of Catholicism I ever saw. . . . upon going into the church, I found there not only Papists, but Presbyterians, Episcopalians, Quakers, &c. The two chaplains to Congress (one a Presbyterian and the other a Churchman) were amongst the rest. I confess I was pleased to find the minds of people so unfettered with the shackles of bigotry.[86]

Such incidents, even though few, augured well for the spirit of religious toleration that was to mark the new government—the Confederation that even more than its name implied was the beginning of a sovereign independent nation.[87]

Section 8. THE TREATY WITH THE NETHERLANDS (1782) AND OTHER EARLY TREATIES

Prior to the adoption of the American Constitution three treaties were made with foreign countries which are important indications of the trend of public opinion in the United States on the subject of religious liberty. The first of these was concluded in October, 1782, with the Netherlands. This treaty is particularly interesting as being dated one month before Great Britain officially acknowledged the independence of the thirteen colonies. In Article 4 it is provided that

> there shall be an entire and perfect liberty of conscience allowed to the subjects and inhabitants of each party, and their families; and no one shall be molested in regard to his worship, provided he submits, as to the public demonstration of it, to the laws of the country.[88]

In 1783 a similar treaty of "Amity and Commerce" was concluded with Sweden, which substantially copies the provision just mentioned; and in 1785

an even more important treaty was made with Frederick the Great of Prussia. By its ninth article it was agreed that

> the most perfect freedom of conscience and of worship is granted to the citizens or subjects of either party within the jurisdiction of the other, without being liable to molestation in that respect for any cause other than an insult on the religion of others.[89]

These guarantees of religious freedom are specially significant, since treaties are part of the law of the land.

Many similar treaties have since been concluded, including a large group in the period from 1824 on, resulting from the breakup of the Spanish power in Latin America and the founding of new nations there. Most of these contain the following clause or something similar:

> The most perfect and entire security of conscience shall be enjoyed by the citizens or subjects of both the contracting parties, in the countries subject to the jurisdiction of the one and the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country.[90]

A relatively recent provision of a similar character was embodied in a "Treaty of Friendship and General Relations" concluded with Spain after the close of the Spanish–American War and ratified in 1903. This guarantees that "the citizens and subjects of each of the two High Contracting Parties shall enjoy in the territories of the other the right to exercise their worship."[91]

The provisions of one other treaty are worth recording here. In 1867 a treaty was made with Russia regarding Alaska. In this, among various specified conditions, it was "understood and agreed, that the churches which have been built in the ceded territories by the Russian government, shall remain the property of such members of the Greek Oriental Church resident in the territory as may choose to worship therein," and this country assumed responsibility to protect remaining inhabitants "in the free enjoyment of their liberty, property and religion."[92] In most subsequent treaties somewhat similar provisions are recorded.[93] In view of these agreements and other considerations, a Federal court in the District of Columbia in 1896 confirmed the right of a Lutheran congregation to some property in Sitka which had been granted to it by the former Russian government.[94]

These and other treaties open up a very interesting possibility. The Honorable Charles Warren, well known as historian of the Supreme Court and of the Constitution, has called my attention to their possible significance as providing the basis for a case on which the Supreme Court might at any time rule on the religious-freedom issue. That the issues involving religious freedom under treaties and international agreements have frequently become acute for

our government and for organized religious groups in this country will be shown when we consider the protection of the rights of coreligionists in other countries.[95]

Section 9. THE RESOLUTIONS OF CONGRESS REGARDING A PROPOSAL OF THE CHURCH OF ROME (1783)

The relation of the Catholic Church to the new government presented matters of great difficulty owing to the fact that the Roman pontiff, who is recognized by all Roman Catholics as the living head of the Church, is not subject to American laws. This condition and the peculiar difficulties of the situation were recognized by Rome, as is shown elsewhere.[96] On the whole, the matter has been adjusted amicably because the leaders of American Catholicism, like the leaders of English and French Catholicism, have been loyal to the national point of view, and the Roman *Curia* has recognized the fact that American Catholics live in a republic with a national Constitution whose provisions must be observed.

An early crisis arose soon after the establishment of peace with Great Britain and the organization of the new government, when the papal nuncio of Paris, under date of July 28, 1783, shortly before the signing of the formal treaty of peace, addressed a note to Benjamin Franklin, then our minister to France. This seemed to indicate that there were certain matters affecting Roman Catholicism in America which Rome thought could be settled by agreement with the Congress.

The Nuncio Apostolic has the honor to transmit to Mr. Franklin the subjoined note. He requests him to cause it to be presented to the Congress of the United States of North America, and to support it with his influence.

Note,—Previous to the revolution which has just been completed in the United States of North America, the Catholics and missionaries of those provinces depended in spiritual matters, on the Vicar-Apostolic residing in London. It is now evident that this arrangement can be no longer maintained, but, as it is necessary that the Catholic Christians of the United States should have an ecclesiastic to govern them in matters pertaining to religion, the *Congregation de Propaganda Fide,* existing at Rome, for the establishment and preservation of missions, have come to the determination to propose to Congress to establish, in one of the cities of the United States of North America, one of their Catholic brethren, with the authority and power of Vicar-Apostolic and dignity of Bishop, or simply with the rank of Apostolic Prefect. The institution of a Bishop-Apostolic appears the most suitable, inasmuch as the Catholics of the United States may have within their reach the reception of Confirmation and Orders in their own country. And as it may sometimes happen that among the members of the Catholic body in the United States, no one may be found qualified to undertake the

charge of the spiritual government, either as Bishop or Prefect-Apostolic, it may be necessary under the circumstances, that Congress should consent to have one selected from some foreign nation on close terms of friendship with the United States.[97]

Franklin's own observations on this note, as transmitted to the nuncio, have been preserved.

Mr. Franklin, after reading the note of M. the Nuncio and reflecting upon it maturely, believes that it would be absolutely useless to send it to the congress, which, according to its powers and its constitutions, can not, and should not, in any case, intervene in the ecclesiastical affairs of any sect or of any religion established in America. Each particular State has reserved to itself by its own constitutions the right to protect its members, to tolerate their religious opinions, and not to interfere with the matter, as long as they do not disturb civil order.

Mr. Franklin is therefore of opinion that the Court of Rome may take, of its own initiative, all the measures that may be useful to the Catholics of America, without disregard to the constitutions, and that Congress will not fail to give its tacit approval to the choice that the Court of Rome, in concert with the minister of the United States, may make of a French ecclesiastic, who, residing in France, may regulate the spiritual affairs of the Catholics who live, or who may come to establish themselves, in those States, through a suffragan residing in America.

Besides many political reasons that may make that arrangement desirable, M. the Apostolic Nuncio must find in it many others that may be favorable to the intentions of the Court of Rome.[98]

But any plan such as the one proposed, which would have made American Catholics dependent on a French ecclesiastical intermediary, would certainly have been unacceptable to Carroll and most of his American friends. The plan evidently had at least in part a political purpose, and is frequently referred to by Catholic historians as representing a French intrigue in which the French minister to the United States was also involved.

Franklin also sent the nuncio an accompanying note in which, among other things, he called attention to the fact that

In the greater number of the colonies, there is no endowment, no fixed revenue, for the support of a clergy of whatever denomination; legislation, viewing this subject from the standpoint of a more general freedom, has been unwilling to make a public charge of a tax that should [could] be only voluntary and private.[99]

Franklin finally decided to transmit the request of the nuncio to the Continental Congress. This was done under date of September 13 without accompanying personal comment. John Carroll[100] heard rumors of the general plan, and wrote to an English friend under date of September 26 that

... A foreign temporal jurisdiction will never be tolerated here; and even the spiritual

supremacy of the Pope is the only reason why in some of the United States the full participation of all civil rights is not granted to the Roman Catholics. They may therefore send their agents when they please; they will certainly return empty-handed.[101]

The first official evidence of American reaction is shown in a communication from the French minister to the Prime Minister, the Count Charles de Vergennes (1717–87), dated Annapolis, January 31, 1784:

Monseigneur the Apostolic Nuncio has made some propositions in the name of His Holiness to Doctor Franklin in regard to the sending of a bishop, or vicar-apostolic, whom the Holy Father desires to place over the Roman Catholic churches of this continent. The Congress has respectfully welcomed that overture; it has been unable, however, to take action in this matter, which is not of the competency of Congress. It is a matter that concerns the Catholics alone; and the delegates who have spoken to me on the subject have assured me that a Catholic bishop would be very well received in the state of Pennsylvania, and much more so in Maryland, where there are many Catholics, providing the prelate carefully avoided to assume any temporal jurisdiction or authority. The congress, in general, would be pleased at the residence of a prelate, who by conferring the sacrament of Holy Orders on the priests of these parts, would relieve them of the necessity of receiving it in London or in Quebec, as has been done in the past. Some of the delegates even believed that a Catholic bishop would not refuse to confer Holy Orders on the Anglican ministers of America, who, until now, have been obliged to procure their ordination at London; but this practice does not seem to me to be compatible with the profession that those who receive Holy Orders must make, or with the examination that they must undergo. The State Legislatures and Congress refrain from entangling themselves with religious matters.[102]

The attitude of Congress, which was of vital importance to all subsequent American history, was shown in the following resolution adopted in May following:

Resolved, That Doctor Franklin be desired to notify to the Apostolic Nuncio at Versaille, that Congress will always be pleased to testify their respect to his sovereign and state; but that the subject of his application to Doctor Franklin, being purely spiritual, it is without the jurisdiction and powers of Congress, who have no authority to permit or refuse it, these powers being reserved to the several states individually.[103]

Commenting on this decision, a student of American diplomacy has written:

The importance and value of this action, to all the subsequent history of the nation, are scarcely to be overestimated. . . . It was a priceless precaution against our being drawn into complications with alien powers in which,—as at that time was all but universally the case,—church and state were united to the detriment of both.[104]

These evidences of Congressional unwillingness to have any official relationship between the government and the Roman Catholic Church are not

to be interpreted as showing an unfriendly attitude toward a particular religious body, but merely as representing a determination to keep Church and State distinct and separate. Indeed, members of the Continental Congress, although almost all Protestants, attended mass in large numbers at St. Mary's Church, Philadelphia, November 4, 1781, to celebrate the victory at Yorktown, and on three other public occasions between 1777 and 1781.[105]

Section 10. THE ORDINANCE OF 1787 FOR THE GOVERNMENT OF THE NORTHWEST TERRITORY

The tenth national document affecting religious freedom is the ordinance for the government of the Northwest Territory—that is, the country between the Mississippi, the Ohio, and the Great Lakes. This was developed from a draft originally prepared by Jefferson. As passed by the Continental Congress, this contains the following provisions:

> And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory. . . . [Section 13]
>
> It is hereby ordained and declared, . . . that the following articles shall be considered as articles of compact between the original States and the people and the States in said territory, and forever remain unalterable, unless by common consent, to wit:
>
> Article I. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory.
>
> Article III. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. . . . [This has been considered a summary of new England policy.]
>
> Article V. . . . The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles. . . .[106]

These provisions, which have had a great influence on the development of policy in the states of the Middle West and Northwest, are considered second only in importance to the Bill of Rights of the Constitution as a guarantee of religious freedom. Indeed, the whole ordinance is so wise and liberal in spirit that Daniel Webster said that he doubted "whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character."[107] It was continued in effect by act of Congress August 7, 1789, after the adoption of the Federal Constitution. It has formed the basis of government provided by Congress for all the territories of the United States.

Abraham Lincoln (1809–65) recognized this. Speaking at Columbus, Ohio, on September 16, 1859, he said in part:

Not only did that ordinance [of 1787] prevail, but it was constantly looked to whenever a step was taken by a new Territory to become a State. Congress always turned their attention to it, and in all their movements upon this subject they traced their course by that ordinance of '87. When they admitted new States they advertised them of this ordinance as a part of the legislation of the country. They did so because they had traced the ordinance of '87 throughout the history of this country. Begin with the men of the Revolution, and go down for sixty entire years, and until the last scrap of that Territory comes into the Union in the form of the State of Wisconsin, everything was made to conform to the ordinance of '87, excluding slavery from that vast extent of country.[108]

This ordinance embodied in permanent form, and for the whole of the Northwest Territory, the provisions of the act passed May 20, 1785, by the Continental Congress disposing of western lands and ordering the rectangular system of townships. This policy was begun the following year, in what is now the southwestern section of Ohio. Under these provisions Lot Number 16 of every township, including 640 acres, was set aside for the support of schools, Lot Number 29 for the support of religion, and two townships for the benefit of a university.[109] These provisions were observed when in 1788 the Ohio Company of Associates, led by Manasseh Cutler (1742–1823), who was largely responsible for them, founded Marietta, the first permanent settlement in Ohio. It was not until 1860 that the township grant for higher education was restricted to the "State University" and that the grant for schools was modified so as to refer only to "common schools"—both changes being made to prevent public funds going to sectarian institutions.[110] Prior to that time Ohio University at Athens, founded in 1804, and Miami University at Oxford, founded in 1809, both undenominational but with Protestant traditions, were established from funds secured by sales or leases of land in these reserved townships, and higher education under Christian auspices was otherwise aided. This was in accordance with the Ohio constitution of 1802, which had this reference to giving land, in proportion to their adherents, to all duly formed religious bodies, such grants being a participation in the proceeds of public lands set apart by Congress for the support of religion:

Sec. 26. The laws shall be passed by the legislature which shall secure to each and every denomination of religious societies in each surveyed township, which now is or may hereafter be formed in the State, an equal participation, according to their number of adherents, of the profits arising from the land granted by Congress for the support of religion, agreeably to the ordinance or act of Congress making the appropriation.[111]

The Southwest Ordinance of 1790 setting up "The Territory of the United States, south of the River Ohio" contained the same guarantees as the Ordinance of 1787, and applied to Tennessee and (later) to the Mississippi Territory prior to their becoming states. Consequently these regions were governed as Ohio was in its early days.

Section 11. THE OTHER EVIDENCES OF THE INTEREST OF THE CONTINENTAL CONGRESS IN RELIGION

The Continental Congress also showed its interest in religion in many ways other than those already mentioned.[112] Its records are full of references to "God," under many titles, to "Jesus Christ," the "Christian Religion," "God and the Constitution," and to the "Free Protestant Colonies."[113] The religious sanction for its utterances and acts is emphasized. Its legislation was not merely on political, economic, and military matters, but included definite references to Sunday observance, prayer, morality, repentance for "sins," public worship, thanksgiving, Christian education in the states, attendance at divine service by officers and men of the Army,[114] and true religion. The legislators undertook their task with a clear feeling of its importance and of the need of encouraging the religious spirit in the new nation, while at the same time avoiding favoritism to any denomination.

Chapter VII

THE OFFICIAL ACTS AND UTTERANCES OF THE FOUNDERS REGARDING RELIGION AND RELIGIOUS FREEDOM AFTER THE CONSTITUTION

We have already dealt with similar acts and utterances *prior* to the adoption of the Constitution. There are eight matters, in addition to the Constitution and the Bill of Rights, which have seemed of sufficient importance to be brought together for the later period, as they all throw light on the foundations of our Church and State relations in this country.

Introduction—The Adoption of the Constitution and the Bill of Rights (1787–91)—the fundamental documents establishing religious freedom as far as the Federal government is concerned.

1. *Divine Service as Part of Washington's Inauguration (1789)*—clear evidence that the Congress wished to have the government started under religious auspices.

2. *The Presidential Thanksgiving Day Proclamation of 1789.* This proclamation, issued by President Washington at the request of Congress, shows that the founders of the new nation were actuated by a religious spirit.

3. *The Abolition of "Benefit of Clergy" by Congress (1790).* This action shows that not only was there to be no State Church in the United States, but that ministers of religion in general were to be treated like all other citizens, as far as the Federal courts were concerned.

4. *The Proposed "Church for National Purposes" in the L'Enfant Plan for the National Capital (1791).* This is interesting as indicating that there was recognition in some official circles that the Federal government wished to show respect for religion.

5. *The Farewell Address of Washington in 1796 and His Other Utterances on the Importance of Religion and Religious Freedom.* These show the feeling of the father of his country that religion was necessary to insure public and private morality.

6. *Treaties with Tripoli (1797 and 1805).* These are interesting as evidence of the broadly tolerant spirit of the new government. The change in wording in the second treaty, where the original statement that the United States is

"not founded on the Christian religion" was omitted, is evidence that many influential people had felt that the government had gone too far in the first treaty in denying the Christian character of the American State.

7. *The Holding of Religious Services in the Hall of the House of Representatives.* This was another evidence of the desire of the early Congresses to show respect for religion without giving advantage to any denomination. President Jefferson's attendance and apparent approval of the plan is particularly worthy of note.

8. *Individual Attitudes and Opinions of the Founders of the Government.* The Founding Fathers were almost all strong believers both in the Christian religion, although not necessarily in its orthodox creedal expressions, and in religious freedom.

Introduction—The Adoption of the Constitution and the Bill of Rights (1787–91). These are the fundamental documents on which the American system of religious freedom has been built. Although the two clauses dealing with religion—one against "religious tests" for office, and the other against any "law respecting the establishment of religion, or prohibiting the free exercise thereof"—applied only to acts of Congress and to matters deemed under Federal jurisdiction, the debates over them proved of such vital meaning for the developing republic that they helped to influence the states which had not taken action to adopt similar provisions. The significance of these provisions as well as that of other features of the Constitution and its Fourteenth Amendment is so great that they will be dealt with at length in a separate chapter (VIII). Here they are mentioned merely so that their chronological place in the story of early American Church–State relations—or the absence of formal relations—may be clearly understood. It must always be remembered that it was only after the Fourteenth Amendment was adopted, and the "due process" clause of the Constitution liberally construed by the Supreme Court, that the Federal constitutional guarantees were interpreted as applicable to state cases.

Section 1. A DIVINE SERVICE AS PART OF WASHINGTON'S INAUGURATION (1789)

The minutes of the Senate of the United States for April 27, 1789, contain two records of much significance from the standpoint of these volumes. The Senate resolved to hold a religious service in connection with President Washington's inauguration, and it received a communication from the Right Reverend Samuel Provost (1742–1815) accepting the appointment of "Chaplain to Congress," a post to which he had been elected on April 29, after serving by appointment in 1785 (January 27) as chaplain to the Continental Congress.

Whether the two events had any internal connection we do not know, but the announcements occur in successive paragraphs.

The first action as given in the *Journal* read:

Resolved, That, after the oath shall have been administered to the President, he, attended by the Vice President and the members of the Senate and House of Representatives, proceed to St. Paul's Chapel, to hear divine service, to be performed by the Chaplain of Congress already appointed.

Sent to the House of Representatives for concurrence.

The House received the action on the same day, but it was ordered to lie on the table until the 29th,[2] when the Senate's proposal was passed in slightly amended form, namely:

Resolved, That this House doth concur with the Senate in the said resolution, amended to read as followeth, to wit:

"That, after the oath shall have been administered to the President, the Vice President, and members of the Senate, the Speaker and members of the House of Representatives, will accompany him to St. Paul's Chapel, to hear divine service, performed by the Chaplain of Congress."

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.[3]

There is no further reference to the matter in the Senate *Journal* further than a statement on the 30th that the matter was "adjusted," probably by the Senate accepting the House phraseology.

As we look at the two resolutions after a century and a half it is difficult to see any essential difference between them except that the House form made due mention of the speaker, thus protecting the prerogative of the second chamber, and that its provision for Congress "to accompany" the president smacked a little less of royalty than the Senate's "to attend."

A contemporary broadside, April 29,[5] gives the order of the procession, as agreed to by committees of both houses of Congress, with the speaker immediately preceding the president and vice-president, and indicates that pews were reserved for these officials as well as for the senators and representatives. It further states that the two committees at the close of "divine service" were to meet the president at the door of the church, and accompany him in carriages to his residence. It is to be noted that this was not a service provided by an Episcopal church to which senators and representatives were invited, but an official service carefully arranged for by both houses of Congress and conducted by their duly elected chaplain, who happened to be the bishop of the Episcopal diocese of New York.

Contemporary accounts in the press[6] and records in memoirs add little to

the above, except to tell us that the plan as formulated was carried out in every detail; that the president kissed the Bible after taking the oath of office; and that he read his address "in the plainest manner."

It may be queried why an Episcopal church was chosen. The answer is probably threefold: it was the Church of the president; it was the Church of the chaplain; and it had in St. Paul's an unusually spacious church edifice in the city (although possibly exceeded in size by that of the Lutherans), and one within half a mile of Federal Hall. It was erected in 1766 as a chapel of Trinity, and still stands. The mother parish church, which would have been even more convenient in location, was not available at the time; the old Trinity Church had been destroyed by fire in 1776, and its successor was in course of construction.

Section 2. THE PRESIDENTIAL THANKSGIVING DAY PROCLAMATION OF 1789, AND OTHER EARLY NATIONAL RELIGIOUS PROCLAMATIONS

The origins of the American Thanksgiving Day go back to Puritan New England. The first recorded event of this character was held by the Plymouth Colony December 20, 1620;[7] the first public thanksgiving of the Massachusetts Bay Colony was on July 8, 1630.[8] These precedents were regularly followed from 1680 on. The first thanksgiving in Connecticut was October 12, 1637.[9]

The first fast day was held November 15, 1636. The records of the Plymouth Colony record this important vote: "That it be in the power of the Governor & Assist[s] to comand solemn daies of humiliacon by fasting &c, and also for thankesgiving as occasion shall be offered."[10]

The Continental Congress from time to time during the Revolutionary War appointed days of thanksgiving and prayer. We have already referred to the one in June, 1775, and others will be referred to later.[11] Here we are concerned with the early national religious proclamations of the president and Congress. Especially significant was the resolution introduced by Elias Boudinot (1740–1821) in the first Congress after the adoption of the Federal Constitution and passed after some discussion:

> Resolved, That a Joint Committee of both Houses be directed to wait upon the President of the United States, to request that he would recommend to the People of the United States a day of Thanksgiving and Prayer, to be observed by acknowledging with grateful hearts the many signal favours of Almighty God, especially by affording them an opportunity peacefully to establish a Constitution of Government for their safety and happiness.[12]

Most of the members favored the plan, but there was some objection. The

principal opponents seem to have come from South Carolina, the most thoughtful statement being by Thomas T. Tucker of that state, who believed that the House had no business to interfere in a matter of this character. He said:

Why should the President direct the people to do what, perhaps, they had no mind to do? They may not be inclined to return thanks for a constitution until they have experienced that it promotes their safety and happiness. We do not know but that they may have reason to be dissatisfied with the effects it has already produced; but whether this be so or not, it is a business with which Congress have nothing to do; it is a religious matter, and as such is proscribed to us. If a day of thanksgiving must take place, let it be done by the authority of the several States; they know best what reason their constituents have to be pleased with the establishment of this Constitution.[13]

Boudinot's arguments, however, prevailed, and the day was established, President Washington issuing a proclamation breathing a deeply religious spirit. It is entitled "Proclamation For A National Thanksgiving."

Whereas it is the duty of all nations to acknowledge the providence of Almighty God, to obey his will, to be grateful for his benefits, and humbly to implore his protection and favor; and whereas both Houses of Congress have, by their joint committee, requested me "to recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a form of government for their safety and happiness;"

Now, therefore, I do recommend and assign Thursday, the twenty sixth day of November next, to be devoted by the people of these States to the service of that great and glorious Being, who is the beneficent Author of all the good that was, that is, or that will be; that we may then all unite in rendering unto him our sincere and humble thanks for his kind care and protection of the people of this country previous to their becoming a nation; for the signal and manifold mercies, and the favorable interpositions of his providence, in the course and conclusion of the late war; for the great degree of tranquility, union, and plenty, which we have since enjoyed; for the peaceable and rational manner in which we have been enabled to establish constitutions of government for our safety and happiness, and particularly the national one now lately instituted; for the civil and religious liberty with which we are blessed, and the means we have of acquiring and diffusing useful knowledge; and, in general, for all the great and various favors, which he has been pleased to confer upon us.

And, also, that we may then unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations, and beseech him to pardon our national and other transgressions; to enable us all, whether in public or private stations, to perform our several and relative duties properly and punctually; to render our national government a blessing to all the people, by constantly being a government of wise, just and constitutional laws, discreetly and faithfully executed and obeyed; to protect and guide all sovereigns and nations (especially such as have shown kindness

to us), and to bless them with good governments, peace, and concord; to promote the knowledge and practice of true religion and virtue, and the increase of science, among them and us; and, generally, to grant unto all mankind such a degree of temporal prosperity as he alone knows to be best.

Given under my hand, at the city of New York, the third day of October, in the year of our Lord one thousand seven hundred and eighty-nine.

(signed) GEORGE WASHINGTON[14]

This proclamation issued by the president at the request of Congress is important for our purposes. Though not referring to the churches it was understood in view of Colonial and Revolutionary precedents, that it was to them that most citizens wishing to follow the government's recommendation would go to worship "God Almighty," "the great Lord and Ruler of Nations." It will be noted that a major cause of thanksgiving was for "civil and religious liberty."

Two of Washington's other proclamations of a religious character are also worth recording. On January 1, 1795, he proclaimed a day of prayer and thanksgiving when the prospect of another foreign war had decreased, and again a year later when the treaty with England was sustained. He also appointed February 19, 1795 a day of public thanksgiving and prayer in connection with the ending of the so-called Whiskey Insurrection in western Pennsylvania in the summer of 1794. It was considered so serious an uprising on the part of dissatisfied democratic groups near the frontier that Washington felt it necessary to order out the militia, which occupied the disturbed region in November.

In 1798, when many felt that the ideas of the French Revolution might have a demoralizing and perhaps disastrous influence on the new republic, President John Adams (1735–1826), acting on his own initiative, appointed May 9 as a "day of solemn humiliation, fasting and prayer" that "our country may be protected from all dangers which threaten it."[15] He was a staunch Federalist, and his proclamations bear evidence of fear that the godless and socially radical ideas of the French Revolution, transplanted, as he thought, in large measure to the United States by Jefferson, might prove disastrous. Here is a quotation from his first message, issued on March 23, 1798:

... The United States of America are at present placed in a hazardous and afflictive situation, by the unfriendly disposition, conduct, and demands of a foreign power, evinced by repeated refusals to receive our messengers of reconciliation and peace, by depredations on our commerce, and the infliction of injuries on very many of our fellow-citizens, while engaged in their lawful business on the seas;—under these considerations it has appeared to me that the duty of imploring the mercy and benediction of Heaven on our country, demands at this time a special attention from its inhabitants. . . .

... I do hereby recommend, that Wednesday, the 9th day of May next, be observed ... as a day of solemn humiliation, fasting, and prayer; that the citizens of these States,

abstaining on that day from their customary worldly occupations, offer their devout addresses to the Father of mercies, agreeably to those forms or methods which they have severally adopted as the most suitable and becoming; that all religious congregations do, with the deepest humility, acknowledge before God the manifold sins and transgressions with which we are justly chargeable as individuals and as a nation; beseeching him at the same time, of his infinite grace, through the Redeemer of the World, freely to remit all our offences, and to incline us, by his Holy Spirit, to that sincere repentance and reformation which may afford us reason to hope for his inestimable favor and heavenly benediction. . . ."[16]

This proclamation can be understood only as we bear in mind the French influence of the time and the bitter controversy which it provoked between the Federalists, who felt it should make Americans humble and prayerful for the removal of the threatened dangers, and the Antifederalists, who favored Jefferson and France, and consequently would not in most cases recognize the day of prayer. As a result—more than in any case in our history outside the Civil War period—the proclamation proved a bone of contention.

His second proclamation of this character was issued in March, 1799, at the time of the serious visitation of yellow fever. It began:

As no truth is more clearly taught in the volume of inspiration, nor any more fully demonstrated by the experience of all ages, than that a deep sense and due acknowledgment of the governing providence of a Supreme Being, and of the accountableness of men to Him as the searcher of hearts and righteous distributor of rewards and punishments, are conducive equally to the happiness and rectitude of individuals and to the wellbeing of communities; as it is, also, most reasonable in itself, that men who are made capable of social acts and relations, who owe their improvements to the social state, and who derive their enjoyments from it, should, as a society, make their acknowledgments of dependence and obligation to Him, who hath endowed them with these capacities, and elevated them in the scale of existence by these distinctions; as it is, likewise, a plain dictate of duty, and a strong sentiment of nature, that in circumstances of great urgency and seasons of imminent danger, earnest and particular supplications should be made to Him who is able to defend or to destroy. . . .[17]

This fast day was observed April 25, 1799; Adams' special purpose was to help "save our cities and towns from a repetition of those awful pestilential visitations under which they have lately suffered so severely."[18]

President Thomas Jefferson (1743–1826), for conscientious reasons based on his views of religious freedom and Church-State separation, broke with the Washington–Adams tradition as to the propriety of the Federal government's proclaiming days of national prayer and thanksgiving. In a note to Attorney General Levi Lincoln, January 1, 1802, he wrote:

Averse to receive addresses, yet unable to prevent them, I have generally endeavored

to turn them to some account, by making them the occasion, by way of answer, of sowing useful truths and principles among the people, which might germinate and become rooted among their political tenets. The Baptist address, now enclosed, admits of a condemnation of the alliance between Church and State, under the authority of the Constitution. It furnishes an occasion, too, which I have long wished to find, of saying why I do not proclaim fastings and thanksgivings, as my predecessors did. The address, to be sure, does not point at this, and its introduction is awkward. But I foresee no opportunity of doing it more pertinently. I know it will give great offence to the New England clergy; but the advocate of religious freedom is to expect neither peace nor forgiveness from them. Will you be so good as to examine the answer, and suggest any alterations which might prevent an ill effect, or promote a good one, among the people? You understand the temper of those in the North, and can weaken it, therefore, to their stomachs: it is at present seasoned to the Southern taste only. . . .[19]

The address referred to by Jefferson in the above note was evidently his answer to Nehemiah Dodge, Ephraim Robbins, and Stephen S. Nelson, a committee of the Danbury Baptist Association, Connecticut, which, as finally transmitted, was also dated January 1, 1802, and has been already quoted in discussing Jefferson's views of the separation of Church and State.[20] He also gave his views in a clear and effective way in a letter to a well-known Presbyterian clergyman. Writing to the Reverend Samuel Miller from Washington on January 23, 1808, he says:

Sir,—I have duly received your favor of the 18th, and am thankful to you for having written it, because it is more agreeable to prevent than to refuse what I do not think myself authorized to comply with. I consider the government of the United States as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises. This results not only from the provision that no law shall be made respecting the establishment or free exercise of religion, but from that also which reserves to the States the powers not delegated to the United States. Certainly, no power to prescribe any religious exercise, or to assume authority in religious discipline, has been delegated to the General Government. It must then rest with the States, as far as it can be in any human authority. But it is only proposed that I should *recommend,* not prescribe a day of fasting and prayer. That is, that I should *indirectly* assume to the United States an authority over religious exercises, which the Constitution has directly precluded them from. It must be meant, too, that this recommendation is to carry some authority, and to be sanctioned by some penalty on those who disregard it; not indeed of fine and imprisonment, but of some degree of proscription, perhaps in public opinion. And does the change in the nature of the penalty make the recommendation less a *law* of conduct for those to whom it is directed? I do not believe it is for the interest of religion to invite the civil magistrate to direct its exercises, its discipline, or its doctrines; nor of the religious societies, that the General Government should be invested with the power of effecting any uniformity of time or matter among

them. Fasting and prayer are religious exercises; the enjoining them an act of discipline. Every religious society has a right to determine for itself the times for these exercises, and the objects proper for them, according to their own particular tenets; and this right can never be safer than in their own hands, where the Constitution has deposited it.

I am aware that the practice of my predecessors may be quoted. But I have ever believed, that the example of State executives led to the assumption of that authority by the General Government, without due examination, which would have discovered that what might be a right in a State government, was a violation of that right when assumed by another. Be this as it may, every one must act according to the dictates of his own reason, and mine tells me that civil powers alone have been given to the President of the United States, and no authority to direct the religious exercises of his constituents.

I again express my satisfaction that you have been so good as to give me an opportunity of explaining myself in a private letter, in which I could give my reasons more in detail than might have been done in a public answer; and I pray you to accept the assurances of my high esteem and respect.[21]

James Madison (1750/51–1836) proclaimed several days for fasting and thanksgiving, although he had some scruples on the subject of his constitutional position in the matter. One case was of special significance. On August 20, 1812, in connection with the war he appointed a national fast day to pray, among other things, that "God would guide their public counsels," "animate their patriotism," and "bestow a blessing on their arms."[22] This created some opposition from Federalists, who did not believe the war justifiable and therefore considered the president's proclamation political in its significance and an impertinence. His views as to the propriety of Federal proclamations of days of prayer and thanksgiving are given in a letter written to Edward Livingston in 1822. In this he referred to his objection to chaplains paid from the public treasury, and added:

There has been another deviation from the strict principle in the Executive proclamations of fasts and festivals, so far, at least, as they have spoken the language of *injunction,* or have lost sight of the equality of *all* religious sects in the eye of the Constitution. Whilst I was honored with the Executive trust, I found it necessary on more than one occasion to follow the example of predecessors. But I was always careful to make the Proclamation absolutely indiscriminate, and merely recommendatory; or, rather, mere *designations* of a day on which all who thought proper might *unite* in consecrating it to religious purposes, according to their own faith and forms. . . . I have no doubt that every new example will succeed, as every past one has done, in shewing that religion and Government will both exist in greater purity the less they are mixed together.[23]

This carries the more important history of Federal proclamations of prayer and thanksgiving through the earliest period of our government, covering the administrations of four of the great fathers of the republic, Washington, Adams, Jefferson, and Madison. It will be noticed that to the first two such proclamations seemed natural and proper; to the third, Jefferson, they seemed improper, and that to the fourth, Madison, in spite of his deep religious convictions, they seemed questionable, though he issued several. On the whole, however, the tradition of the propriety of such evidences of national dependence on God became generally recognized, as we shall see in dealing with the history of Thanksgiving Day.[24] This opinion was shared by large Congressional majorities.

Section 3. THE ABOLITION OF "BENEFIT OF CLERGY" BY CONGRESS (1790)

In colonial days most of the colonies gave certain special legal rights to clergymen, including that of a trial before an ecclesiastical court in many cases where laymen would have to appear before a civil court. Such cases, when exempting a clergyman from criminal process, are generally referred to by a term common in the Middle Ages, "benefit of clergy." This was abolished, as far as proceedings in Federal courts were concerned, by the Act of Congress of April 30, 1790, entitled "An act for the punishment of certain crimes against the U.S." Section 31 of that act provided "That the benefit of clergy shall not be used or allowed, upon conviction of any crime, for which, by any statute of the United States, the punishment is or shall be declared to be death." This action set a precedent which virtually removed this ancient form of clerical privilege from use in Federal jurisprudence. The Act of 1790 was carried into the revised statutes, where it reads: "The benefit of Clergy shall not be used or allowed upon conviction of any crime for which punishment is or shall be declared to be death."[25] Although the section was repealed in the criminal code of 1909, this is only a technicality, as the Senate report on the criminal code indicates that it was merely "omitted as obsolete." The omission has become so well established that it no longer needs to be stated.[26]

The Act of Congress of 1790 was and is a direct evidence of the desire of the founders of the government to carry out their ideals of Church and State separation. Reminiscences of the old custom, however, remained for a short time in certain states. For instance, in North Carolina it was "specifically recognized by law as late as 1837.[27] As late as 1844, a criminal defendant was denied benefit of clergy only because he had 'received his clergy' on three previous occasions."[28]

Section 4. THE PROPOSED "CHURCH FOR NATIONAL PURPOSES" IN THE L'ENFANT PLAN FOR THE NATIONAL CAPITAL (1791)

Maj. Pierre Charles L'Enfant, who was entrusted by President Washington with designing a plan for the "national city," provided for what he called, in his letter to the president under date of August 19, 1791, "the grand church."[29] This was to be placed near the site of the present Patent Office. At the side of the plan submitted to the president, under "References," is the following statement:

> This Church is intended for national purposes, such as public prayer, thanksgivings, funeral Orations, &c., and assigned to the special use of no particular Sect or denomination, but equally open to all. It will be likewise a proper shelter for such monuments as were voted by the late Continental Congress, for those heroes who fell in the cause of liberty and for such others as may hereafter be decreed by the voice of a grateful Nation.[30]

The proposal in its broad recognition of religion and its entire absence of denominationalism was not inconsistent with ideas current at the time in national political circles. It is also interesting to note that the general plan was presented to President Washington August 28, 1791, and was accepted by him.[31] It is not to be assumed that the president gave special attention to this particular proposal for a church, but it is probable that if he had thought it inappropriate he would have asked for its elimination. It is also worth noting that in the letter quoted L'Enfant suggests the

> appropriation of the several squares as one proposed in the plan to be alloted to each of the individual states as also the making of a free donation to every particular religious society of a ground for House of wors'h a move from which Infinite advantage must result.[32]

This is in keeping with the legend on the side of the original plan indicating the definite purpose of the various religious bodies to erect churches at the capital:

> These figures colored red, are intended for the use of all religious denominations, on which they are to erect places of worship, and are proposed to be allotted to them in the manner as those colored yellow to the different States in the Union. . . .[33]

Of course it did not prove feasible or desirable to carry out this particular feature of L'Enfant's plan under government auspices. There have been, however, two developments in line with certain aspects of his proposal, namely,

the frequent holding in the early days of the republic of public worship on Sundays in the House of Representatives (VII, 7, above); and the granting by Congress in 1893 of a charter to Washington Cathedral with the power to its trustees "to establish and maintain within the District of Columbia a Cathedral and institutions of learning for the promotion of religion and education and charity."[34]

Section 5. THE "FAREWELL ADDRESS" OF WASHINGTON IN 1796 AND HIS OTHER UTTERANCES ON THE IMPORTANCE OF RELIGION AND RELIGIOUS FREEDOM

On June 8, 1783, General Washington issued from his Newburgh headquarters a circular letter addressed to the governors of all the states. It was on the occasion of disbanding the Army. The second of its three closing paragraphs, here printed in italics in the interest of clarity, has frequently been used as a prayer by placing "Almighty God" before it, and by ending with "through Jesus Christ our Lord." With these additions it is commonly referred to as "George Washington's Prayer":

It remains, then, to be my final and only request, that your Excellency will communicate these sentiments to your legislature at their next meeting, and that they may be considered as the legacy of one, who has ardently wished, on all occasions, to be useful to his country, and who, even in the shade of retirement, will not fail to implore the Divine benediction upon it.

I now make it my earnest prayer that God would have you, and the State over which you preside, in his holy protection; that he would incline the hearts of the citizens to cultivate a spirit of subordination and obedience to government; to entertain a brotherly affection and love for one another, for their fellow citizens of the United States at large, and particularly for their brethren who have served in the field; and finally, that he would most graciously be pleased to dispose us all to do justice, to love mercy, and to demean ourselves with that charity, humility, and pacific temper of mind, which were the characteristics of the Divine Author of our blessed religion, and without an humble imitation of whose example in these things, we can never hope to be a happy nation.

I have the honor to be, with much esteem and respect, Sir, your Excellency's most obedient and most humble servant.[35]

In 1796 the first President gave the country his mature views on matters of policy in what is called his "Farewell Address." In this he said:

Of all the dispositions and habits which lead to political prosperity, Religion and Morality are indispensable supports.—In vain would that man claim the tribute of Patriotism, who should labour to subvert these great pillars of human happiness, these

firmest props of the duties of Men and Citizens.—The mere Politician, equally with the pious man ought to respect and to cherish them.—A volume could not trace all their connections with private and public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths, which are the instruments of investigation in Courts of Justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure; reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.[36]

President Washington's more definite views on the subject of religious freedom are shown not only in his attending places of worship of many denominations but in his many references to the subject. For example, in his address to "the Ministers, Elders, Deacons and Members of the Reformed German Congregation of New York" dated November 27, 1783, he wrote:

The establishment of Civil and Religious Liberty was the Motive which induced me to the Field; the object is attained and it now remains to be my earnest wish & prayer, that the Citizens of the United States would make a wise and virtuous use of the blessings, placed before them.[37]

The same breadth of view is indicated in the replies he wrote on assuming the presidency to greetings from various religious bodies. For instance, in his reply to the General Committee[38] representing the United Baptist Churches in Virginia, May, 1789, he said:

If I could have entertained the slightest apprehension, that the constitution framed in the convention, where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical society, certainly I would never have placed my signature to it; and, if I could now conceive that the general government might ever be so administered as to render the liberty of conscience insecure, I beg you will be persuaded, that no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny, and every species of religious persecution. For you doubtless remember, that I have often expressed my sentiments, that every man, conducting himself as a good citizen, and being accountable to God alone for his religious opinions, ought to be protected in worshipping the Deity according to the dictates of his own conscience.

While I recollect with satisfaction, that the religious society of which you are members have been, throughout America, uniformly and almost unanimously the firm friends to civil liberty, and the persevering promoters of our glorious revolution, I cannot hesitate to believe, that they will be the faithful supporters of a free, yet efficient general government. Under this pleasing expectation I rejoice to assure them, that they may rely on my best wishes and endeavours to advance their prosperity.

In the mean time be assured, Gentlemen, that I entertain a proper sense of your fervent supplications to God for my temporal and eternal happiness.[39]

Again in his reply to the Quakers he wrote:

The liberty enjoyed by the people of these States of worshipping Almighty God agreeably to their consciences, is not only among the choicest of their blessings, but also of their rights. While men perform their social duties faithfully, they do all that society or the state can with propriety demand or expect, and remain responsible only to their Maker for the religion or mode of faith which they may prefer or profess. . . .[40]

Washington was very friendly with Charles Carroll of Carrollton, who did much to commend the high ideals and patriotism of Roman Catholics to the founders of the nation. It is satisfactory to know that in the same year (1789) he replied to the Catholics:

As mankind becomes more liberal, they will be more able to allow that those who conduct themselves as worthy members of the community are equally entitled to the protection of civil government. I hope ever to see America among the foremost nations in examples of justice and liberality.[41]

In 1789 Bishop Asbury, along with other representative Methodist leaders, presented a message of congratulation and of assurance of their support to President Washington. His reply to them, which was in the form of a letter addressed "To the Bishops of the Methodist Episcopal Church in the United States of America," shows very clearly two characteristics which mark the founder of our country—his very deep interest in religion, and his broad and tolerant attitude in all religious matters. He wrote:

Gentlemen: I return to you individually, and through you to your Society collectively in the United States, my thanks for the demonstration of affection, and the expressions of joy offered, in their behalf, on my late appointment. It shall be my endeavor to manifest the purity of my inclinations for promoting the happiness of mankind, as well as the sincerity of my desires to contribute whatever may be in my power toward the civil and religious liberties of the American people. In pursuing this line of conduct, I hope, by the assistance of divine Providence, not altogether to disappoint the confidence which you have been pleased to repose in me.

It always affords me satisfaction when I find a concurrence of sentiment and practice between all conscientious men, in acknowledgements of homage to the great Governor of the universe, and in professions of support to a just civil government. After mentioning that I trust the people of every denomination who demean themselves as good citizens will have occasion to be convinced that I shall always strive to prove a faithful and impartial patron of genuine, vital religion, I must assure you in particular that I take in the kindest part the promise you make of presenting your prayers at the throne of grace for me, and that I likewise implore the divine benediction on yourselves and your religious community.

George Washington[42]

His remarkable message to the Jews is printed in a later section.[43] But perhaps more significant was his statement in a letter to Lafayette in France:

I am not less ardent in my wish, that you may succeed in your plan of toleration in religious matters. Being no bigot myself to any mode of worship, I am disposed to indulge the professors of Christianity in the church with that road to Heaven, which to them shall seem the most direct, plainest, easiest, and least liable to exception. . . .[44]

This same thought is also brought out clearly and in more carefully prepared phrases in the letter he wrote to the New Church in Baltimore, January 27, 1793:

We have abundant reason to rejoice that in this Land the light of truth & reason has triumphed over the power of bigotry and superstition, and that every person may here worship God according to the dictates of his own heart. In this enlightened Age & in this Land of equal liberty it is our boast, that a man's religious tenets will not forfeit the protection of the Laws, nor deprive him of the right of attaining & holding the highest offices that are known in the United States.[45]

Washington lived up to this ideal both as commanding general and as president. It was largely due to his order to the Army in 1775 deploring the "ridiculous and childish custom of burning the effigy of the Pope," that this unseemly and intolerant old New England custom vanished from America.[46]

Section 6. THE TREATIES WITH TRIPOLI (1797 AND 1805)

In the early days of the Federal government several of the states, by the oaths of office prescribed in their constitutions, by the specified disqualifications for office, or by other methods, did as a matter of fact virtually establish Christianity, and sometimes Protestant Christianity, as the religion of the State, and this without constitutional challenge on the part of the Federal government. This fact, and some early decisions of the Supreme Court, indicate that the states had, at least prior to the Fourteenth Amendment, the right to establish a state religion if they wished.[47] There can be no question that the states and the Federal government considered that they were Christian states.

The only statement of any importance which we have found in the official documents of the United States which seems to deny specifically that the government was founded on the Christian religion is Article XI of the treaty with Tripoli, concluded by the United States February 10, 1797. This read as follows:

As the government of the United States of America is not, in any sense, founded on the Christian religion; as it has in itself no character of enmity against the laws,

religion, or tranquility of Musselmen; and as the said States never have entered into any war or act of hostility against any Mahometan nation, it is declared by the parties that no pretext arising from religious opinion shall ever produce an interruption of the harmony existing between the two countries.[48]

This treaty was ratified by the Senate in June of the same year, soon after John Adams' accession to the presidency. It had been drafted by the well-known American man of letters Joel Barlow (1754–1812), our consul in Algiers, whose long stay in France had made him cosmopolitan and somewhat radical in his point of view.

As under Article VI of the Constitution all treaties made under the authority of the United States "shall be the supreme law of the land," this treaty, if it had not been amended, would have been a serious matter from the point of view of the Christian standing or background of the government. The clause has often been quoted by those who wished to deny that the United States as a government has any special regard for the Christian religion, but they have almost invariably failed to call attention to the fact that the treaty was superseded, less than a decade later, by another "Treaty of Peace and Amity," signed in Tripoli June 4, 1805, in which the clause in question denying that the United States "is, in any sense, founded on the Christian religion" is omitted. Article XIV of the new treaty reads:

As the Government of the United States of America has in itself no character of enmity against the laws, religion, or tranquility of Musselmen, and as the said States never have entered into any voluntary war or act of hostility against any Mahometan nation, except in the defence of their just rights to freely navigate the high seas, it is declared by the contracting parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two nations. And the Consuls and Agents of both nations respectively, shall have liberty to exercise his religion in his own house. All slaves of the same religion shall not be impeded in going to said Consul's house at hours of prayer. The Consuls shall have liberty and personal security given them to travel within the territories of each other both by land and sea, and shall not be prevented from going on board any vessel that they may think proper to visit. They shall have likewise the liberty to appoint their dragoman and brokers.[49]

The change in the first sentence is a virtual repudiation of the negative statement in the original treaty, and as such is highly significant from our standpoint, especially as it was made during the Jefferson administration.

The nearest approach I have found to the original Tripoli treaty statement is that contained in a letter from the secretary of state, John Forsyth, in the Van Buren administration (1840) to the American minister in Turkey, in

which the minister was asked to use his good offices in behalf of certain accused Jews in Damascus. In this Forsyth said:

The President is of the opinion that from no one can such generous endeavors proceed with so much propriety and effect as from the representative of a friendly power, whose institutions, political and civil, place upon the same footing the worshipers of God of every faith and form, acknowledging no distinction between the Mohammedan, the Jew, and the Christian.[50]

This is legally an accurate statement, but one which does not prevent the recognition of the Christian ethic and ideal as underlying our government.

Section 7. THE HOLDING OF RELIGIOUS SERVICES IN THE HALL OF THE HOUSE OF REPRESENTATIVES

The House of Representatives early in its history authorized the use of its hall for religious services. Congress moved from Philadelphia to Washington in 1800, the Senate wing of the new capitol being completed at that time. This provided the best auditorium in the new city. There were then only three churches, none of them of a permanent character—Christ Church, Episcopal, a Roman Catholic chapel, and St. Andrew's Presbyterian Church—all small buildings.[51]

During the administration of Thomas Jefferson, who was president from 1801 to 1809, the capitol was used for religious services. These were generally held in the main hall of the old Senate wing, where both houses met prior to the completion in 1807 of the House wing.[52] We are told that the president himself frequently attended; that the Marine Band played; and that there were preachers not only from the orthodox Protestant churches, but from Quakers, Roman Catholics, and Unitarians. The attendance was generally very large, and the event was recognized as important in the social and religious life of the capital.[53] The Reverend Manasseh Cutler (1742–1823), the Ohio pioneer who assisted in drafting the Ordinance of 1787 and who was a Federalist member of Congress from 1801 to 1805, refers several times to these services in his journal and letters, frequently noting that the president was in the congregation.

The first reference was January 3, 1802, Sunday.

The two Houses of Congress were insulted by the introduction of Leland, the Cheese monger, as a preacher, . . . text, "And behold a greater than Solomon is here." Jefferson was present; the allusion was intended and obliquely directed more to him than the glorious Christ to whom the text refers. . . . His first observation was: "Solomon was born with a silver spoon in his mouth, and a scepter in his hand."[54]

In a letter two days later he referred to the same incident:

Such a farrago, bawled with stunning voice, horrid tone, frightful grimaces, and extravagant gestures, I believe, was never heard by any decent auditory before. Shame or laughter appeared in every countenance. Such an outrage upon religion, the Sabbath, and common decency, was extremely painful to every sober, thinking person present. But it answered the much-wished for purpose of the Democrats, to see religion exhibited in the most ridiculous manner.[55]

Cutler, being a strong Congregationalist and Federalist, was naturally highly critical of John Leland, a Baptist minister and Jeffersonian, whose contribution to religious freedom was considerable.[56]

Another reference to the capitol services occurs in a letter of January 3, 1803. Referring to Jefferson he says:

On the first Sabbath before the Chaplains were elected, and when few members had arrived, Dr. Gant proposed, on Saturday, to preach the next day, when the President, his daughter and grandson, and Mr. Lewis attended. On the third Sabbath, it was very rainy, but his ardent zeal brought him through the rain and on horseback to the Hall. Although this is no kind of evidence of any regard to religion, it goes far to prove that the idea of bearing down and overturning our religious institutions, which, I believe, has been a favorite object, is now given up. The political necessity of paying some respect to the religion of the country is felt.[57]

He was critical of some of the preachers, going so far in one case (April 25, 1802) as to say that he "could not prevail upon" himself to hear him again, but of others he spoke with appreciation, and praised the music. Writing of two services early in 1805, he says that after the preaching the Marine Band played "Denmark." "They attended in their uniform about 80 or 100," performing "two pieces of psalmody."[58] An interesting paper could be written devoted entirely to Cutler's comments on these services.

Another contemporary has left a most interesting account of these early services. Mrs. Margaret Bayard Smith (1778–1844), whose husband conducted *The National Intelligencer,* the first newspaper in Washington, from 1800 on, wrote certain reminiscences in 1837 regarding conditions when she and her husband first arrived in the capital. She says that the preaching services in the Hall of Representatives were established early in the Jefferson administration (1801–09), and that seats were always kept for the president and his secretary, the former attending regularly. She refers to these Sunday assemblies as "a favorable one for the youth, beauty, and fashion of the city, church and environs," and adds that members of Congress gave up their seats for the "faire auditors." The services were so popular that the floor of the House proved inadequate, and the platform behind the speaker's chair and every other spot

was filled. When she wrote, a third of the way through the century, the levity which had characterized the assemblies in earlier years "has long yielded to a more decorous and reverent demeanor."

She also mentions hearing Edward Everett on one occasion "deliver an eloquent and flowery discourse, to a most thronged and admiring audience," and tells us that in keeping with Frederick the Great's plan for erecting a temple in which the services of the different Christian denominations might be conducted, preachers of all sects were admitted, including Catholics, Unitarians, and Quakers, "with every intervening diversity of sect," even women. Mrs. Smith tells us that the invitations to preach were extended by the chaplain.[59]

On November 19, 1804, the House of Representatives during the second session of the Eighth Congress ordered that in the future no person other than the chaplain be permitted to hold religious services in the hall without the consent of the speaker, implying that occasional services, in addition to the regular semiofficial ones already described, had been held prior to that time. But the practice of holding irregular services did not die easily. As late as March 3, 1828, Congress again ordered that its halls should not be used except for the business of Congress and religious services on Sunday. This was in keeping with action taken in 1809, when the use of the hall of the House was even declined for a Fourth of July celebration desired by the people of the District.[60]

The matter of the official Sunday services has been so generally overlooked by historians that it seems well to add here something about the later history of the custom. In the published letters to his wife written by a Massachusetts Congressman, Abijah Bigelow, from 1810 to 1815, there are ten or more references to the Sunday "meetings" he attended in the hall of the House of Representatives.[61] He had a low opinion of the preaching of the chaplains—Reverend Messrs. Breckenridge and Lee—and preferred to attend the services when their place was taken by visiting clergymen, of whom he mentions a Quaker, a Navy chaplain, a Georgetown pastor, and others. Writing under date of January 23, 1814, he says that the "chaplains are miserable preachers. I mean not to say they are bad men, but their discourses are much below mediocrity." He refers to President Madison attending on one occasion; and to an amusing experience related to him by the Reverend Mr. Laury (*sic*, probably Reverend James Laurie, pastor of the Associate Reformed Church in Washington from 1803 on), who earned the ire of Jefferson by preaching in his presence in the capitol from the text of the second chapter of the second Epistle of Saint Peter.[62] Its attacks on "false prophets" with their "damnable heresies," "feigned words," and "pernicious ways," who "have forsaken the right way" and "speak great swelling words of vanity," who "promise liberty,"

though they themselves are the servants of corruption,[63] were believed to reflect Federalist opinion of Jefferson and his followers.

A contemporary reference to the Sunday service custom is found in the diary of John Quincy Adams when secretary of state under President Monroe. Under date of December 23, 1821, he writes:

Mr. Sparks, the Unitarian, preached for the first time at the Capitol to a crowded auditory and his election as Chaplain to the House of Representatives occasioned much surprise and has been followed by unusual symptoms of intolerance. Mr. Hawley, the Episcopal preacher at St. John's Church, last Sunday preached a sermon of coarse invective upon the House, who, he said, by this act had voted Christ out of doors, and he enjoined upon all the people of his flock not to set their feet within the Capitol to hear Mr. Sparks. In the course of last week, Mr. Patterson, a member from the State of New York, moved that the House should proceed to the choice of another Chaplain, on the pretence that he had vacated the appointment by non attendance. It appeared that the Speaker had for some time omitted to give notice to Mr. Sparks of his appointment, and that Sparks was then in the city, ready to commence the performance of his duties. Patterson, after some discussion, finding himself unsupported withdrew his motion. This extraordinary mode of opposition has only served to render Sparks more conspicuous, and to sharpen the curiosity to hear him.[64]

This incident is of special interest because the chaplain referred to, Jared Sparks (1789–1866), was later distinguished as an American historian and president of Harvard University. He was at the time minister of the new Unitarian Church in Baltimore.

The next year, on March 16, 1822, the chaplains of Congress were given permission to occupy the Senate Chamber on the following day, "for the purpose of public worship."[65]

Of all the addresses at the Sunday services so long held in the hall of the House of Representatives probably none is more significant than that of the Catholic Bishop of Charleston, the widely respected John England (1788–1842). The address was delivered on the invitation of the speaker, January 8, 1826, in the presence of President John Quincy Adams and a crowded assembly of senators, representatives, and other distinguished persons.

His own account of the occasion is given in a letter to a friend:

On the day I filled the Speaker's chair I was indeed a show, & all Washington must have thought so, for the throng was so great that the President found it very difficult to get in, & when in, much more so to get a seat. Upon my arrival, nearly half an hour after, I found vast numbers returning without a hope of getting upstairs, so as even to see in,—& for once I must own I felt ashamed at hearing my own name proclaimed by my friends Haynes & Hamilton of S. C., who formed my bodyguard, whilst in all the pomp of Prelacy I struggled through and heard the proclamation renewed

still to make way for me to enter. If I could blush, I am convinced I then did, because I had some unusual sensation of heart and some unwonted glow in my cheek and on my forehead. When I was done I certainly felt a very extraordinary gratification at the intense attention with which I was heard, & that every face seemed to say "go on". But I thought two hours enough for them & for me,—I made the sign of the cross, & my gratification was indeed increased by the vast & respectable portion of the assembly that exhibited its Faith. You will, perhaps, smile at my saying that even elevated as I was, I could not forget that I once was an insignificant being, & I vouchsafed to come down from my seat to recognize the President of the United States & converse a little with him.[66]

The bishop had preached at St. Matthew's Church in Washington a fortnight earlier—on Christmas Day—taking as his text some anti-Catholic phrases in Mr. Adams' Fourth of July oration in 1821, when secretary of state. That oration had been largely given to the theme of the new religious freedom in America due to the Protestant Reformation and other causes. But the bishop's personal relations with the president were friendly.

The address in the House was given extemporaneously, but reduced to writing and published[67] from his own notes and those of attendants, at the written request of a representative group of Congressmen. It was a model of courtesy, courage, and clear reasoning, and was devoted to the cause of religion and the Church. The preacher discussed frankly "the essential distinction between the Roman Catholic Church and every other"—its divine authority and infallibility in defining the doctrine of revelation. He stated, however, that he did not believe the pope to be infallible—that doctrine having at that time not been defined. Then he developed the relationship of the Church to the American government in what for our purposes are the most important paragraphs of his address:

A political difficulty has been sometimes raised here. If this infallible tribunal, which you profess yourselves bound to obey, should command you to overturn our government, and to tell you that it is the will of God to have it modelled anew, will you be bound to obey it? And how then can we consider those men to be good citizens, who profess to owe obedience to a foreign authority, to an authority not recognized in our constitution, to an authority which has excommunicated and deposed sovereigns, and which has absolved subjects and citizens from their bond of allegiance?

Our answer to this is extremely simple and very plain; it is that we would not be bound to obey it, that we recognize no such authority. I would not allow to the Pope, or to any bishop of our church, ouside this Union, the smallest interference with the humblest vote at our most insignificant balloting box. He has no right to such interference. You must, from the view which I have taken, see the plain distinction between spiritual authority and a right to interfere in the regulations of human government or civil concerns. You have in your constitution wisely kept them distinct and separate.

It will be wisdom, and prudence, and safety to continue the separation. Your constitution says that Congress shall have no power to restrict the free exercise of religion. Suppose your dignified body tomorrow attempted to restrict me in the exercise of that right; though the law, as it would be called, should pass your two houses and obtain the signature of the president, I would not obey it, because it would be no law, it would be an usurpation; for you cannot make a law in violation of your constitution, you have no power in such a case. So, if that tribunal which is established by the Creator to testify to me what he has revealed, and to make the necessary regulations of discipline for the government of the church, shall presume to go beyond that boundary which circumscribes its power, its acts are invalid; my rights are not to be destroyed by its usurpation; and there is no principle of my creed which prevents my using my natural right of proper resistance to any tyrannical usurpation. You have no power to interfere with my religious rights; the tribunal of the church has no power to interfere with my civil rights. It is a duty which every good man ought to discharge for his own, and for the public benefit, to resist any encroachment upon either. We do not believe that God gave to the church any power to interfere with our civil rights, or our civil concerns. Christ our Lord refused to interfere in the division of the inheritance between two brothers, one of whom requested that interference. The civil tribunals of Judea were vested with sufficient authority for that purpose, and he did not transfer it to his Apostles. It must hence be apparent, that any idea of the Roman Catholics of these republics being in any way under the influence of any foreign ecclesiastical power, or indeed of any church authority in the exercise of their civil rights, is a serious mistake. There is no class of our fellow-citizens more free to think and to act for themselves on the subject of our rights than we are; and I believe there is not any portion of the American family more jealous of foreign influence or more ready to resist it. We have brethren of our church in every part of the globe, under every form of government; this is a subject upon which each of us is free to act as he thinks proper. We know of no tribunal in our church which can interfere in our proceedings as citizens. Our ecclesiastical authority existed before our constitution, is not affected by it; there is not in the world a constitution which it does not precede, with which it could not coexist; it has seen nations perish, dynasties decay, empires prostrate; it has coexisted with all, it has survived them all, it is not dependent upon any one of them; they may still change, and it will still continue.[68]

He took up many other related subjects, emphasizing certain convictions, especially that the Church had protected democracies, such as the Swiss Republic and San Marino; that it did not believe in persecution; and that it claimed no right to interfere with the government of republics.

Bishop England's statement is of special value both because of its occasion and his high standing. It helps to fill a gap in the scarcity of authoritative statements on the theory of Church–State relations in this country from the American hierarchy.

A similar incident occurred in 1847 when on the invitation of several dis-

tinguished statesmen, including John Quincy Adams, Stephen A. Douglas, and John C. Calhoun, the Most Reverend John Hughes, Archbishop of New York, gave an address in the capitol on "Christianity, the Only Source of Moral, Social, and Political Regeneration."[69] This invitation may well have been an attempt to make amends for the bad treatment Roman Catholics had received in some parts of the country.[70]

The Reverend William Henry Milburn, well known as "the blind chaplain," was elected a chaplain of Congress in 1845 and again in 1853. Writing a few years later in his autobiography *Ten Years of Preacher-Life,* he said:

> The duties of the Chaplaincy were simple enough. To open the two Houses of Congress with prayer daily, to preach in the Hall of Representatives on Sunday morning; and as there were two of us to perform these offices, there was abundant leisure to follow our bent.[71]

Similarly, in 1856, when a book was published entitled *Chaplains of the General Government,* the custom was still in force, the author placing first among the chaplains' duties "preaching on Sabbath morning in the Capitol."[72] He incorporates an account of the first sermon preached by a new chaplain the previous year, the nonagenarian Revolutionary veteran, the Reverend Daniel Waldo, 1762–1864.[73] His text was appropriate in this time of growing sectional bitterness: "Wherefore, my brethren, let every man be swift to hear, slow to speak, slow to wrath," James 1.19.

Apparently however the Sunday services in the capitol were falling into disfavor, for a contemporary writer in the mid-fifties, referring to the Senate chaplain (the Reverend H. C. Dean), says that "being able to obtain only a small hearing on the Sabbath, he preached but few times in the Capitol during the long session to which he was appointed a chaplain. . . ."[74] But on December 13, 1857, the first public use of the present House of Representatives was for divine service, and there is record of the Sunday services being held fairly regularly when Congress was in session that year, being generally conducted by the regular chaplains with occasional visiting preachers. Such notices as these appear in the *Daily National Intelligencer:*

> The chaplain of the Senate may be expected to preach in the Capitol tomorrow (Sunday) morning at 11 o'clock.
>
> Rev. George D. Cummins of the Trinity Church preached in the new Hall of the House of Representatives to a very large assemblage. . . .[75]

Preachers at this period did not always confine themselves to a simple spiritual message. We find, for example, the chaplain of the House taking as his subject "The Origin and Evil Influence of the Theatre."[76]

In the two years following (that is, during the 35th Congress) no official

chaplains were chosen, prayer being said in turn by local clergyman in alphabetical order; but on February 21, 1860, the *Intelligencer* announces:

> It is to be hoped that the Chaplains of the Senate already chosen, will be furnished with a colleague by the House ere this week shall close, when it is presumed they will proceed together to conduct the worship of God every Sabbath in the Capitol.[77]

This hope was fulfilled, and we find three weeks later that the plan was again adopted of "having public worship conducted every Sabbath morning in the United States Capitol as well for the benefit of strangers as for those members who are not seated in the churches of the city."[78] The revival of the old order seemed to work so well that in 1862 and 1863, perhaps because of the large numbers wishing to attend, the services were sometimes held both in the Senate and the House at the same time.

But the Civil War, which caused so many interruptions in national life, also had its destructive effect on the capitol services. There appears to have been only one recorded in the press in 1865 and two in 1867; indeed, a search of church notices in Washington papers for a decade from the last date shows no reference to them. Similarly a search of the *Congressional Globe* and its successor the *Congressional Record* from 1856 to 1877 does not indicate the time of their discontinuance.[79] However, the Reverend William H. Milburn (1823–1903), writing in 1887, says that "the preaching in the Hall of Representatives has been abolished, by whom I know not, nor for what purpose."[80]

As Dr. Milburn had served as chaplain of the House of Representatives and of Congress by many appointments—1845, 1853, 1885—it is to be assumed that he would have known the date had it been shortly before his writing.[81] All this confirms the impression of the writer reached before the investigation of the files of Washington papers that the custom of holding regular Sunday services in the building of the capitol dropped out in the reconstruction period.

The latest case of the use of the capitol for regular Sunday worship that has come to our attention was an unusual one. It was in the winter of 1867–68 when the First Congregational Church—then without a building—was permitted to use the hall of the House of Representatives for its regular Sunday services for about five months. This was facilitated by the fact that the chaplain of the House at the time, the Reverend Charles B. Boynton (1806–83), was also pastor of the church, and had been an effective advocate of the Union and anti-slavery cause—a factor of importance, as the Southern states were still unrepresented in Congress.

There have also been a few times when a representative churchman has been invited to make an address before Congress or at least in one of its halls. Such was the case when on January 24, 1865, Bishop Matthew Simpson (1811–84),

of the Methodist Episcopal Church, whose eloquence had meant much to the Union cause in the Civil War and was admired by President Lincoln, was granted the use of the Senate chamber for an address.[82]

It is hoped that these brief and incomplete notes may stimulate some scholar to study much more thoroughly the interesting and almost unrecognized phase of Church-State relations discussed in this section.

It would also be worth while to have the matter studied with reference to state legislatures. The most recent case I have noticed of a prominent ecclesiastic being invited to address a legislature was in 1941 when the Senate of Texas adopted a resolution felicitating the Most Reverend Robert E. Lucey on his nomination as Archbishop of San Antonio, wishing him "a happy and successful reign as the good shepherd of his people in the great States of Texas and Oklahoma," and inviting him to address the Senate at his convenience.[83]

Section 8. THE INDIVIDUAL ATTITUDES AND OPINIONS OF THE FOUNDERS OF THE GOVERNMENT

(1) THE RELIGIOUS CONNECTIONS OF THE FRAMERS OF THE CONSTITUTION

In previous chapters (VI and VII) we have quoted the most important official utterances of the government at the time of the Revolution and of the adoption of the Constitution. These show a deep respect for the Christian religion and a desire to have it supported in such ways as were not inconsistent with religious freedom. Now we come to consider the individual attitudes of the early leaders.

The membership of the Constitutional Convention represented all the leading Christian groups[84] except the Baptists, whose stronghold—Rhode Island—sent no delegates. For instance, the Methodists had Richard Bassett of Delaware; the Quakers, Thomas Mifflin of Pennsylvania and John Dickinson of Delaware; the Presbyterians, Gunning Bedford, Jr., of Delaware, William Paterson of New Jersey, William Richardson Davie of North Carolina, Luther Martin of Maryland, and William Livingston of New Jersey; the Roman Catholics, Daniel Carroll of Maryland, brother of Bishop Carroll, and Thomas Fitzsimmons of Pennsylvania; the Episcopalians, James Madison (although he was perhaps not orthodox), Edmund Randolph, George Washington, John Blair, George Wythe, and George Mason, of Virginia, C. C. Pinckney and Charles Pinckney of South Carolina, Alexander Hamilton of New York, and William Samuel Johnson of Connecticut; the Congregationalists, Oliver Ellsworth of Connecticut,[85] Abraham Baldwin of Georgia, Nicholas Gilman and John Langdon of New Hampshire, and Caleb Strong, Elbridge Gerry, Nathaniel Gorham, and Rufus King, of Massachusetts.

Some of these, such as Washington, Madison, and Mason, were such strong supporters of religious freedom that we have dealt with them individually.[86] All are believed to have been Christian theists, and the great majority were connected with the churches, though some were neither orthodox in belief nor regular in church attendance.

The framers of the state constitutions were also, in the great majority of cases, Christian men with Protestant Church affiliations, and they seem to have shown the same regard for religion as did the founders of the Federal government. They liked to open their sessions with prayer and to show respect for Sunday. They inserted in the bills of rights and constitutions they framed clauses designed to protect the rights of conscience and the interests of organized religion. Michigan and West Virginia alone did not name the Deity. Three-fourths of them used in the preamble the phrase "grateful to Almighty God," or "invoking the favor and guidance"—or "the blessing"—"of Almighty God."[87] Church property used for religious purposes was exempted from taxation. It was realized that such control or encouragement of religious bodies as was either necessary or advisable in the interest of public welfare and order was a state rather than a Federal function.

(2) THE VIEWS OF THE FOUNDERS—WASHINGTON, MADISON, JEFFERSON, FRANKLIN, HAMILTON, MARSHALL, THE ADAMSES, JAY, AND OTHERS

That Washington was a man of religious faith and practice, and of broad tolerance, has been shown in discussing his attitudes and utterances at the time of the founding of the government.[88] We have also, in telling of the development of religious freedom in America, described the attitude toward religious faith and the work of the Churches of various leaders in the formation of our government; such as James Madison[89] and Thomas Jefferson[90]—Madison being a known churchman, Jefferson a vigorous opponent of creedal statements and of narrow denominationalism, but a believer in God and in the ethical teachings of Jesus. The attitude of Franklin[91] has also been considered. It had many points in common with that of Jefferson, but he was more interested in the work of the Churches and seemed to his contemporaries less radical. Here we are concerned with the points of view of the other leading men among the Founding Fathers.

As Alexander Hamilton (1757–1804) played such a large part in the formation of the Union, and as his views on the importance of the Christian religion to the State are seldom mentioned, it may be well to quote from his own proposals on the subject. He had suggested a more inclusive guarantee of religious freedom than the Federal Convention established. It read: "Nor shall any religious sect or denomination or religious test for any office or place

be ever established by law."[92] His tolerant religious attitude is also shown by the fact that, though he was an Episcopalian, and though Columbia College had a connection with that Church through the regular use of the *Book of Common Prayer* in its services, Hamilton provided, in drafting its revised charter after the Revolution, that its board of trustees should include representatives of the various denominations in New York,[93] and broadened its character in other ways.

In a letter he wrote to James Bayard, a leading Federalist member of Congress, in April, 1802, he said:

> . . . In my opinion, the present Constitution is the standard to which we are to cling. Under its banners, *bona fide,* must we combat our political foes, rejecting all changes but through the channel itself provided for amendments. By these general views of the subject, have my reflections been guided. I now offer you the outline of the plan which they have suggested. Let an association be formed to be denominated "The Christian Constitutional Society." Its objects to be,
>
> 1st. The support of the Christian religion.
>
> 2d. The support of the Constitution of the United States.[94]

It appears, however, that this movement had more to do with the Constitution as a political document than it had with religion. Bayard in his reply wrote:

> I have considered with a great deal of attention the project recommended in your last letter, of connected associations in the different States, for the support of our Constitution and religion. The plan is marked with great ingenuity, but I am not inclined to think that it is applicable to the state of things in this country. Such an association must be bottomed upon a stronger and more active principle than reason, or even a sense of common interest, to render it successful.[95]

There is no evidence that the matter went further. The proposal was, however, the precursor of many similar movements in later decades.

A few extracts from Hamilton's writings will show clearly that he was a convinced believer in religious freedom.

In an address to the inhabitants of America, and particularly to the farmers of New York, entitled *A Full Vindication of the Measures of Congress, from the Calumnies of their Enemies; In Answer to a Letter under the signature of A. W. Farmer,*" in 1774, he said:

> But being ruined by taxes, is not the worst you have to fear. What security would you have for your lives? How can any of you be sure you would have the free enjoyment of your religion long? Would you put your religion in the power of any set of men living? Remember, civil and religious liberty always go together: if the foundation of the one be sapped, the other will fall of course. . . .[96]

His most extended discussion of the question of the independence of Church and State is found in his "Remarks on the Quebec Bill," in 1775. Here are the most important extracts bearing on our theme:

Having considered the nature of this Bill with regard to civil government, I am next to examine it with relation to religion; and to endeavor to show, that the Church of Rome has now the sanction of a legal establishment in the province of Quebec.

In order to do this the more satisfactorily, I beg leave to adopt the definition given of an established religion, by a certain writer who has taken great pains to evince the contrary. "An established religion," says he, "is a religion which the civil authority engages, not only to protect, but to support." This Act makes effectual provision, not only for the protection, but for the permanent support of popery; as is evident from the following clause: "And for the more perfect security and ease of the minds of the inhabitants of the said province, it is hereby declared, that his Majesty's subjects, professing the religion of the Church of Rome, in the said province, may have, hold, and enjoy, the free exercise of the religion of the Church of Rome, subject to the King's supremacy, &c.; and that the clergy of the said Church, may hold, receive, and enjoy, their accustomed dues and rights, &c."[97]

The characteristic difference between a tolerated and established religion, consists in this: With respect to the support of the former, the law is passive and improvident, leaving it to those who profess it, to make as much, or as little, provision as they shall judge expedient; and to vary and alter that provision, as their circumstances may require. In this manner, the Presbyterians, and other sects, are tolerated in England. They are allowed to exercise their religion without molestation, and to maintain their clergy as they think proper. These are wholly dependent upon their congregations, and can exact no more than they stipulate and are satisfied to contribute. But with respect to the support of the latter, the law is active and provident. Certain precise dues, (tithes &c.,) are legally annexed to the clerical office, independent of the liberal contributions of the people; which is exactly the case with the Canadian priests; and therefore, no reasonable, impartial man, will doubt that the religion of the Church of Rome is established in Canada. . . .[98]

It must excite a mixture of anger and disdain to observe the wretched arts to which a designing administration, and its abettors, are driven, in order to conceal the enormity of their measures. This whole clause, in its true and original construction, is destitute of meaning; and was evidently inserted for no other end than to *deceive* by the *appearance* of a provident regard for the Protestant religion. The Act first declares, "That his Majesty's subjects, professing the religion of the Church of Rome, may have and enjoy the free exercise of their religion; and that the clergy of the said church, may hold, receive, and enjoy their accustomed dues and rights." Then follows this clause: "Provided, nevertheless, that it shall be lawful for his Majesty, his heirs and successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the Protestant religion, for the maintenance and support of a

Protestant clergy within the said province, as he or they shall, from time to time, think necessary and expedient."

Thus we see, the Romish clergy are to have, hold, and enjoy, their accustomed dues and rights; and the *rest* and remainder of them, is to be applied towards the encouragement of the Protestant religion: but when they have had their wonted dues, I fancy it will puzzle administration, by any effort of political chemistry to produce the *rest*, or remainder. . . .[99]

I imagine it will clearly appear, from what has been offered, that the Roman Catholic religion, instead of being tolerated, as stipulated by the Treaty of Peace, is established by the late Act; and that the Protestant religion has been left entirely destitute and unbefriended in Canada. . . .[100]

Hence, while our ears are stunned with the dismal sounds of New England's Republicanism, bigotry, and intolerance; it behooves us to be upon our guard, against the deceitful wiles of those who would persuade us, that we have nothing to fear from the operation of the Quebec Act. We should consider it as being replete with danger to ourselves, and as threatening ruin to our posterity. Let us not, therefore suffer ourselves to be terrified at the prospect of an imaginary and ficitious Scylla; and, by that means, be led blindfold into a real and destructive Charybdis.[101]

The significance of the Quebec Act from the point of view of American religious freedom is discussed elsewhere.[102]

Hamilton's general tolerance of religious opinion is also brought out in *"An* ACT *to institute an* UNIVERSITY *within this State, and for other purposes therein mentioned,"* which he drafted and which was passed by the New York legislature April 13, 1787. This charter includes a provision: "That no president or professor shall be ineligible for or by reason of any religious tenet or tenets that he may or shall profess; or be compelled by any law or otherwise, to take any test oath whatsoever. . . ."[103] The purpose was to establish a university under the auspices of the state, with King's College, which had been renamed Columbia, as its "core." By the same Act the requirement of the old charter that the president be an Episcopalian and that the prayers of the Church should be used at morning and evening services was done away with.[104]

As to John Marshall (1755–1835), relatively little is known about his specific views on religion and Church-State relations. Although a Unitarian in belief —at least until near the close of his life, when some of his theological doubts appear to have been resolved—he generally worshipped in the Episcopal Church, to which his family belonged. He attended services because, as Bishop Meade states, "he was a sincere friend of religion" and wished "to set an example."[105] He was a vice-president of the American Bible Society.

Beveridge further tells us that Marshall's parents, wife, children, and near relatives were all members of the Episcopal Church, but that he was not con-

firmed because his theological views were Unitarian rather than Trinitarian. When in Richmond he was in the habit of attending Monumental Church, and when in the country the Coolspring Meeting House in Fauquier County. The latter is referred to by Bishop Meade as the place where in his later years Marshall would "prostrate his tall form before the rude, low benches."[106] There is also a fine contemporary story of his arguing late at night with some young men at a tavern in Winchester in defense of the Christian religion. The evidences of his religious attitude are meager but fairly definite.

Marshall was a member of the Virginia legislature in 1784, when many questions about the Church were up for discussion, but, according to Beveridge, he seemed to take "only a languid interest in the religious struggle."[106] He did not vote on such matters as the sale of the Episcopal glebe lands or the marriage bill. He voted against the motion of Madison to postpone the general assessment plan proposed in the interest of religion, evidently because he had some sympathy for it; but he joined with Madison in the final vote for incorporating the Episcopal Church, evidently because he shared Madison's feeling of "the necessity of some sort of incorporation for the purpose of holding & managing the property of the Church. . . ."[107]

Probably his greatest services to religious liberty were through his membership in 1788 on the committee of the convention called to ratify the Federal Constitution, which drafted the religious-rights amendment submitted by Virginia at that time, and through his part as chief justice in upholding the fundamental guarantees of the Federal Constitution and Bill of Rights.[108]

Like most of the political philosophers who drafted the Constitution and laid the foundations of the country, he believed in a God who created the world and to whose will men should bow. For example, in an opinion delivered in 1823, he stated that "There are principles of abstract justice which the Creator of all things has impressed on the mind of his creature man, and which are admitted to regulate, in a great degree the rights of civilized nations."[109]

According to his *Journal,* John Adams (1735–1826), a high-minded man whose career was marked by liberal conservatism, wrote to his wife under date of November 5, 1775: "Statesmen may plan and speculate for Liberty, but it is Religion and Morality alone which can establish the principles upon which Freedom can securely stand. A patriot must be a religious man." But this belief did not make him a narrow denominationalist. We also find from the same record that he worshiped during sessions of the Continental Congress at services of the Roman Catholics, Episcopalians, Presbyterians, Quakers, Baptists, and Methodists,[110] thus emphasizing the tolerance which the Constitution hoped to encourage.

A letter Adams wrote a fortnight before the signing of the Declaration of Independence shows his conviction that the Federal government should not get drawn into denominational differences, but should encourage religious freedom. He said:

I am for the most liberal toleration of all denominations of religionists, but I hope that Congress will never meddle with religion further than to say their own prayers, and to fast and give thanks once a year. Let every colony have its own religion without molestation.[111]

This statement is also interesting as showing that in the formative years of the new government it was taken for granted that each colony that so desired, such as Massachusetts, could retain a connection between the state and some religious body.

Later, in discussing blasphemy laws, we shall quote an even stronger expression of his views on religious freedom.[112]

At the conclusion of his address when inaugurated as second president of the United States, Adams said:

With humble reverence I feel it to be my duty to add, if a veneration for the religion of a people who profess and call themselves Christians, and a fixed resolution to consider a decent respect for Christianity among the best recommendations for public service, can enable me in any degree to comply with your wishes, it shall be my strenuous endeavor that this sagacious injunction of the two Houses shall not be without effect.

And may that Being who is supreme over all, the Patron of Order, the Fountain of Justice, and the Protector in all ages of the world of virtuous liberty, continue His blessing upon this nation and its government and give it all possible success and duration consistent with the ends of His providence.[113]

John Adams, a Congregationalist, is classed as a Unitarian in belief, but certainly his public utterances show him close to the religious feeling of the more conservative groups. For instance, in his proclamation of "a day of solemn humiliation, fasting and prayer," he recommended

that the citizens of these States offer their devout addresses to the Father of Mercies, acknowledge before God the manifold sins and transgressions with which we are justly chargeable, as individuals and as a nation, beseeching Him at the same time, of His infinite grace through the Redeemer of the world, freely to remit all offences, and to incline us by His Holy Spirit to that sincere repentance and reformation which may afford us reason to hope for His inestimable favor and heavenly benediction.[114]

Another early president who had strong views on the subject of religious freedom was John Quincy Adams (1767–1848). Writing from Washington,

January 20, 1842, to James Brooks about an essay he was writing on the war between Great Britain and China, he said:

> Whether I shall live to finish it depends upon him under whose eye the principles of my argument were penned—The Laws of Nature and of Nature's God.
>
> The principles are two.
>
> First, all men are born equal and entitled to unalienable rights, among which are life, liberty, and the pursuit of happiness.
>
> Second, Thou shalt love the Lord thy God with all thy heart and with all thy mind, and thy neighbour as thyself—
>
> The first of these principles contains the whole Science of politics—The second the whole Science of Religion.[115]

Many of the other advocates of political liberty in the formative years of the republic were earnest Christians. Samuel Adams (1722–1803), a Congregationalist; William Livingston (1725–90), a member of the Dutch Reformed Church; and John Jay (1745–1829), the first chief justice, who inherited strong Protestant religious convictions from his Huguenot ancestors, and James Wilson (1742–98) a Presbyterian, may be mentioned as examples, in addition to the outstanding personalities already considered.

Section 9. SUMMARY OF CONCLUSIONS. THE TWOFOLD INTEREST IN PROTECTING RELIGION AS INSPIRATION, AID TO MORALITY, AND SUPPORT OF CIVIL GOVERNMENT; AND IN PROMOTING RELIGIOUS FREEDOM

As we bring to a close these three chapters giving the acts and utterances regarding religion of the founders of our country, both before and after the adoption of the Constitution, we are impressed by two facts:

(1) That the founders were, on the whole, strong believers in religious freedom.

(2) That the founders were almost without exception strong supporters of religion.

They showed their belief in religious freedom in many ways, but especially by the important clauses they put in the Constitution, the Bill of Rights, and the Ordinance of 1787, and by many utterances at state ratifying conventions and in public addresses. There was not a proposal, direct or indirect, for any Federal religious establishment in connection with the discussions on the Constitution. The utterances of George Washington, Thomas Jefferson, James Madison, Benjamin Franklin, and their colleagues, are clear and specific on this point.

Much less recognized, but equally clear, is the conviction of the founders

of the vital importance of religion to the new nation. I expected, before I began this study, to find this to be true as far as President Washington and some of his associates were concerned; but I have been surprised at the mass of evidence to support the claims of religion in a republic as expressed by men like Thomas Jefferson and Benjamin Franklin, who have often been classed as freethinkers. Even Thomas Paine was not an atheist. And the various provisions to encourage religion which we have quoted from the early days of the United States government are cumulative and convincing. Such actions as the resolutions of Congress regarding the Bible, the providing of Congressional chaplains, the Thanksgiving Day proclamation of 1789 and other addresses of President Washington, and the authorizing of religious services in the hall of the House of Representatives—all are impressive. The founders saw clearly and definitely that without religion a democratic government could not succeed. If men are all, as the Declaration of Independence stated, "created equal" and "endowed by their Creator with certain unalienable rights," the maintenance of communion with that Creator, which is the heart of religion, would seem both logical and vital.

The founders saw clearly that religion would be a great aid in maintaining civil government on a high plane. Religion had frequently been used through an established Church; but at times the Church was not an entirely willing partner as a tool of the State, and consequently its spiritual function had been hindered. With the Church removed from State support and supervision it had again an opportunity to perform its major original function—to meet the moral and religious needs of its members. It was realized that by doing this effectively, as it did for instance later, in laying the foundation of Christian civilization in the West,[116] it could become a great moral asset to the nation. This was one of the major matters that Washington emphasized in his replies to the churches which sent him greetings on his inauguration.[117] His trust was not misplaced, and all responsible Churches were treated alike and with underlying sympathy by the government.

Not only have the Churches trained youth in the principles of virtue and the inspirations of religion, but they have felt so grateful for the blessings of civil liberty and order that in every national crisis—except as they were divided by the Civil War—they have become strong bulwarks of government under the Constitution.

Jefferson's writings are full of this double emphasis on religion and religious freedom. He was interested not merely in the latter, as many seem to think, but also in "Nature's God," and in the religion, and especially the ethics, outlined in the teachings of the Founder of Christianity. His attempt to compile a harmony of Gospel teachings—the "Morals of Jesus"—with his introduction

to it, and scores of his letters show this, although he was far from being an orthodox Christian. His main criticism of the Churches was their dogmatic attitude, and his main public desire in this field was to prevent interference by the State in religious matters. He wanted people to return to the simple teachings of Jesus. He saw in religious freedom and in the doing away of establishments a way to avoid "religious dissensions" and thereby with "unbounded tolerance" to secure harmony.[118]

Writing to Ezra Stiles, President of Yale, June 25, 1819, Jefferson said:

> . . . I am of a sect by myself, as far as I know. I am not a Jew, and therefore do not adopt their theology, which supposes the God of infinite justice to punish the sins of the fathers upon their children, unto the third and fourth generation; and the benevolent and sublime Reformer of that religion has told us only that God is good and perfect, but has not defined Him. I am, therefore, of His theology, believing that we have neither words nor ideas adequate to that definition. And if we could all, after this example, leave the subject as undefinable, we should all be of one sect, doers of good, and eschewers of evil. No doctrines of His lead to schism. It is the speculations of crazy theologists which have made a Babel of a religion the most moral and sublime ever preached to man, and calculated to heal, and not to create differences.[119]

Two hundred years ago it was the general opinion that the effective survival of vital religion under laws guaranteeing religious freedom would be impossible; but since the founding of our government it has been increasingly realized by thoughtful people the world over that in the last analysis one of the best ways to encourage true religion is to provide for such freedom. This has its best guarantee in the Christian ideal of the sacredness of human personality, and consequently of independent conviction, stressed in our fundamental American charters of freedom and government. But this makes the work of the Churches the more important, for without their instruction and inspiration religion would languish.

It is, of course, clear that the founders of our country, in providing for constitutional separation of Church and State, at least as far as the jurisdiction of the Federal government was concerned, established a lay State without any ecclesiastical functions or connections; but it is questionable whether the Beards have chosen their words with their usual wisdom when they say that the new national government was "secular from top to bottom."[120] This statement is liable to misunderstanding, at least in continental Europe, where a secular State is frequently thought of as one that is antireligious or at least anti-Catholic. The word "secular," being closely related to the term "secularism,"[121] is used sometimes in the sense of nonecclesiastical; at other times for nonreligious. There can be no doubt that the American government "from top to bottom" is nonecclesiastical. But in view of the statement of the Declaration

of Independence of man's divine origin, and its frequent reference to the Deity, the implication in the Constitution that Sunday is normally a day of rest for government officials, the provision by Congress for chaplains and days of prayer and thanksgiving, and of other significantly related facts, it is doubtful whether we should refer to the United States, at least without an explanatory statement, as a completely secular State. The founders who expected the different states to care for the interests of religion might well have objected. Their own manifold emphasis on religion and its observance and on religious freedom—which was intended to protect religion at least as much as it was to protect non-believers or agnostics—all these evidences are strong reasons for thinking that though the Beards' statement is probably legally and technically correct, it gives an erroneous impression of the basis and the ideals of the American State.

How different was the attitude of the fathers of the republic from that of those who, following the French Revolution, established the first republic in France and later the Commune! There we find violent government opposition to the Church and the clergy; the worship of the Goddess of Reason, set up in Notre Dame Cathedral; the suppression of Sunday; the introduction of a new calendar dated, not as in the American Constitution "in the Year of our Lord one thousand seven hundred and Eighty seven," but from September 22, 1792, the autumnal equinox, which fell on the day after the proclamation of the republic; and other evidences of out-and-out secularism!

The same contrast might be drawn between the American State, mainly Christian in origin, character, and purpose, and with many religious sanctions and symbols, of which "In God We Trust" on coins and in national anthem is an example, and Soviet Russia. The latter's official documents and actions show that it is thoroughly secular in the European sense of the word. Although the Soviet pays lip service in its constitution to freedom of conscience, the Marxian ideology on which it is based is materialistic, totalitarian, atheistic, and unsympathetic with Christian ideals.

Chapter VIII

THE FEDERAL CONSTITUTIONAL PROVISIONS FOR RELIGIOUS FREEDOM AND CHURCH–STATE SEPARATION

Introduction—Chronology. Before taking up the various provisions for religious freedom and Church-State separation provided for in and under our Constitution we shall do well to have the chronology of this period of a century and a half ago—more specifically of the years from 1787 to 1792—clearly in mind.

The Constitutional Convention in Philadelphia from May 25 to September 17, 1787, drafted the Constitution of the United States and transmitted it to the Continental Congress.

The Continental Congress duly received the proposed Constitution and transmitted it by unanimous vote on September 28, 1787, to "a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification . . . ," in accordance with the action taken by the Constitutional Convention on September 17, 1787.[1]

The Constitution was ratified by the nine states necessary to make it valid on June 21, 1788, when New Hampshire's vote was recorded.

The Congress formally announced on September 13, 1788, the ratification of the Constitution; declared the first Wednesday of January, 1789, to be the day "for appointing Electors in the several states"; and proclaimed that government under the new Constitution should be inaugurated on the first Wednesday in March following.

President Washington was inaugurated as the first president of the United States on April 30, 1789.

The first ten amendments, known as the Bill of Rights, were approved by the Senate on September 25, 1789, having passed the House the previous day, and were soon thereafter submitted to the various states. This action was taken in the first session of the Congress of the United States, which began on March 4, 1789.

Virginia ratified the amendments on December 15, 1791, this being the eleventh state. As Vermont had been admitted as the fourteenth state, this

made the necessary number to insure their adoption. Under the decision of the Supreme Court in 1921[2] an amendment is in effect on the day when the legislature of the last necessary state ratifies it. This makes December 15, 1791, the date of ratification of the Bill of Rights. The secretary of state, Thomas Jefferson, formally announced to the states on March 1, 1792, that the amendments had been adopted.

*Section 1. THE CONSTITUTION OF THE UNITED STATES (1787–89)**

The convention of 1787, which actually drafted the Federal Constitution, was called to meet in Philadelphia May 14 for the purpose of amending the Articles of Confederation so as to make them "adequate to the exigencies of the government and the preservation of the Union"; but realizing clearly that a confederation was inadequate and that it must be superseded by a national government, it went beyond the letter of its instructions.[3] Owing to the lack of delegates from a majority of states, it did not begin its labors until May 25, but it completed them September 17, in less than four months. The Constitution was ratified by the necessary number of states the following year, and the new government began officially to function under it early in 1789. This chronology is important, as we shall see later.

(1) THE BACKGROUND OF DEBATES AND ACTIONS ON RELIGIOUS FREEDOM

The preamble of the Constitution appears to be the natural link between it and the preceding Declaration of Independence. The complete preamble reads:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The significance of "We the people of the United States, in Order to . . . secure the Blessings of Liberty . . ." can be fully appreciated only in connection with the phraseology of the Declaration, especially its second paragraph: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

The "Liberty" which the Constitution names comes to men because of their divine birthright, and "the People" have for the same reason the right and capac-

* The author reminds the reader that although an effort has been made to base facts and interpretations on the best constitutional authorities this book is written by a layman, not a lawyer. See the preface.

ity to rule. The difference in tone between the radical Declaration and the relatively conservative Constitution is due partly to their different purposes, and partly to the absence, when the Constitution was adopted, of Thomas Jefferson in France, of John Adams and Thomas Paine in England, of Patrick Henry who had refused election to the convention, and of Samuel Adams who had failed to be chosen.

But the Declaration had nothing directly to say about the form of government planned and the specific rights it must guarantee, though these may in part be implied from the catalogue of colonial abuses under the crown. It must be the opposite of "absolute Despotism" and "absolute Tyranny," and must protect, rather than invade, "the rights of the people." It must not stand for "usurpations" and "Oppressions," but be a government based on those ideas of "our Consent," "Representation," "the free System of English Laws," and "the Laws of Nature and of Nature's God" which had been flouted.

To find, however, the actual positive foundations of the Constitution we must turn elsewhere.

We have already discussed the major Old World influences which affected our American democracy and its religious freedom.[4] Here we are concerned mainly with the major sources of our republican Constitution. These are:

The Mayflower Compact, generally accepted as the earliest example of a written constitution based on the equal rights of all citizens of a commonwealth, then freely adopted and put into effect.

The colonial charters and constitutions, and the Articles of Confederation.

The constitutions of the recently formed states.[5]

The English constitution of the time, including particularly the Bill of Rights of 1688.[6]

The English common law as given in the *Commentaries* of Blackstone, the publication of which was completed in 1769.[7]

The writings of the leading philosophers[8] of the seventeenth and eighteenth centuries, and particularly of John Locke (1632–1704), author of the *Two Treatises on Government* and *Letters concerning Toleration*. Other influential European writers were Algernon Sidney (1622–83), Montesquieu (1689–1735), author of *L'Esprit des Lois,* and Rousseau (1712–78), especially through his *Contrat social.* Joseph Priestley (1735–1804), both before and after his removal to America in 1794, was specially influential in making the opinions of the modern philosophers known in this country.

The independent thinking and historical studies of Madison, the Pinckneys, Mason, Jefferson, John Adams—the last two, however, being abroad

when the Constitution was drafted—and others. These men were for the most part well read in history and in the theories of government, especially those of the philosophers named.[9]

The teachings of the Bible and especially of Christianity.[10] Besides the influence of their general character and ideals, we cannot conceive that a representative group of Marxian Communists, meeting to draft a constitution for a Soviet state, would sign it as did our Founding Fathers, "In the year of our Lord 1787." This tribute to the Christian tradition in the Constitution, whether conscious or unconscious, is significant.

The experience of the various Churches in matters of government and freedom, in Europe, in the American colonies, and in the days of their readjustment as independent Churches between the outbreak of the Revolution and the Constitutional Convention.[11]

Of these nine factors, the first seven had been greatly influenced by the Christian religion; and all except the French philosophers were sympathetic with it. But it is with the last two that we are specially concerned. Suffice it to say here that the delegates to the Constitutional Convention coming from states wedded to varying Church traditions thought it wise to go only as far as to adopt the clause against religious tests for office. More than that seemed unnecessary as far as the Federal government was concerned. The states had already begun to handle the larger matters of religious freedom effectively, and further action by the Federal Constitutional Convention might have been tactless and unwise. It was an impressive fact, however, that when its members returned to their homes they found the lack of any Bill of Rights guaranteeing religious freedom a strong ground in influential circles for opposition to the acceptance of the Constitution, as we shall see in the next section.[12]

Let us now turn to the actual provisions of the Constitution. The "general Welfare" clause is an important one to bear in mind, for it is the well-being of all the people, not of any particular group, in which the Church is naturally interested, and which a country with Christian traditions must promote. It will be remembered that the preamble quoted earlier in this section refers to the same subject, and that in the body of the document it is provided that "The Congress shall have Power to Lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States. . . ."[13]

The "general Welfare" is a field where Church and State have many points of contact, for it involves the observance of the golden rule. Archbishop Mooney (1882–), chairman of the Administrative Board of the National Catholic Welfare Conference, has stated his belief that there is a difference

between the government's purpose and responsibility to *"establish* Justice," which implies definite and final responsibility, and to *"promote* the general Welfare," which, according to the archbishop, connotes or implies "that Government was to leave to the citizens themselves the initiative" in achieving that general welfare.[14] This may be true, but in view of the fact that in Article 1, Section 8, instead of the word "promote" of the preamble, the word "provide" is used for the "general welfare," the same word as is used for "the common Defense," the constitutional interpretation seems strained, even though possibly in keeping with the founders' general ideas.

After these preliminary considerations we must turn to the clauses of our Constitution that specifically deal with the problems of religious freedom. There are two fundamentally important provisions which deal directly with religious rights, namely, the forbidding of religious tests as qualifications for public office in the original Constitution, and the guarantee of religious freedom in the Bill of Rights, which followed two years later. The provisions of the later Fourteenth Amendment, as ratified in 1868, indirectly greatly expand the scope and field of operation of these constitutional guarantees. It seems therefore advisable to consider these, as well as the Judiciary Act of 1789 and its influence, and the general bearing of the accepted common law and equity on our problems, in this chapter, though some of them will carry us a little ahead of the actions discussed later. It is impressive to realize that only fifteen years elapsed between the ratification of the Constitution by a sufficient number of states to assure its adoption (1788) and the decision of the Supreme Court in the case of *Marbury* v. *Madison* (1804),[15] which made the Constitution a workable basis on which religious freedom and other freedoms could be protected. But it took another sixty years before the Fourteenth Amendment extended Federal guarantees of liberty to the states,[16] and much longer before the courts applied these guarantees specifically in any cases involving religious freedom.

We must always remember that the United States is a federal republic with a written Constitution adopted a little more than one hundred and fifty years ago, and not a pure democracy, and that the Constitution, with its promptly appended Bill of Rights, is considered the major legal bulwark of our liberties.

Such written charters providing a well-balanced frame of government and insuring freedom are subjected to severe strain in times of crisis, but they always remain as standards to be observed by all officers of government, and as warnings to those who would tend to lead the country too far either to left or right. Fortunately the Constitution itself contains orderly methods of procedure for amendment, when this is clearly the deliberate will of the people,

and amendment has been successfully resorted to on eleven different occasions since the passing in 1789 of the original amendments constituting the Bill of Rights. These amendments are the bulwark of our liberal democracy, just as the original Constitution of 1787 is the bulwark of conservative democracy—or, as its advocates prefer to call it, republican government. They are equally important, and it is only by protecting both that orderly government and progress are assured.

Although the Declaration of Independence of 1776 contains many references to "Nature's God," the "Creator," and "Divine Providence," there are no such references in the Constitution a decade later. Its only incidental mentions of religion—as distinct from those in the Bill of Rights—are the clauses which except Sundays as days to be counted within which the president may exercise his veto rights on legislation;[17] the dating of the document at its close as "in the Year of our Lord one thousand seven hundred and eighty seven"; and the all-important clause ruling out all Federal religious tests.

The absence of any reference to God in the Constitution was much criticized. This omission was frequently mentioned by those who opposed its ratification in state conventions,[18] and later became the cause of a national movement of some importance.[19] President Timothy Dwight of Yale (1752–1817), who may be considered representative of the conservative Christian element in the country at the time, thought it "highly discreditable to us that we do not acknowledge God in our Constitution," and so informed his students at Yale two decades later. He attributed the omission to Jefferson's influence.[20]

But of greater Constitutional importance was the following reference in the journal of the Convention under date of August 30, 1787:

> It was moved and seconded to add the following clause to the 20th article:—"but no religious test shall ever be required as a qualification to any office or public trust under the authority of the United States;" which passed unanimously in the affirmative.[21]

Charles Pinckney (1757–1824) was mainly responsible for this proposal, which he had made in slightly different form ten days earlier (August 10).[22]

The entire paragraph in which this guarantee was included in its revised form as it appears in the Constitution reads:

> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.[23]

Attention must be called to the use of the word "under" rather than "in."

The Constitution as first adopted contained no clause guaranteeing religious freedom in the states except where a case was under the jurisdiction of the Federal government.

North Carolina was the only state that voted against the adoption of this clause, which seemed to meet general approval, although there was some anti-Catholic objection based on such arguments as that the pope might become president, and the dire effect of having Roman Catholics and pagans in office![24] Referring to the significance of the clause, Judge Joseph Story (1779–1845) said: "The Catholic and the Protestant, the Calvinist and the Arminian, the infidel and the Jew, may sit down to the Communion-table of the National Council, without any inquisition into their faith or mode of worship."[25]

Madison's view of the significance of this action ruling out religious tests for all Federal officers was given in a letter to Edmund Randolph under date of April 10, 1788:

> . . . As to the religious test, I should conceive that it can imply at most nothing more than that without that exception, a power would have been given to impose an oath involving a religious test as a qualification for office. The constitution of necessary offices being given to the congress, the proper qualifications seem to be evidently involved. I think too there are several other satisfactory points of view in which the exception might be placed.[26]

This clause, the first article of the Bill of Rights,[27] and the Fourteenth Amendment as interpreted by the Supreme Court,[28] provide our fundamental legal guarantees of religious freedom.

The references in the Constitution to the taking of oaths by officeholders is sometimes referred to as a religious sanction, but this seems hardly justified, as in every case "or Affirmation" is provided as an alternative to "Oath." An oath is generally understood as involving the Deity or some person or object that is considered of divine significance, but this does not necessarily follow in the case of an affirmation, as standard definitions clearly show. The *Oxford Dictionary* thus defines the two words:

> Oath—A solemn appeal to God (or to something sacred) in witness that a statement is true or a promise binding.
>
> Affirmation—A solemn declaration, having the value and penalties of an oath, by persons who conscientiously decline taking an oath.

The significance of the "affirmation" as distinct from the "oath" has been authoritatively stated in England in a way which corresponds with American usage. The Oath Act of 1888 provided that

> every person upon objecting to being sworn, and stating, as the ground of such

objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath; and if any person making such affirmation shall wilfully, falsely and corruptly affirm any matter or thing which, if deposed on oath, would have amounted to wilful and corrupt perjury, he shall be liable to prosecution, indictment, sentence and punishment in all respects as if he had committed wilful and corrupt perjury.[29]

The framers of the Constitution had in mind, of course, not the scruples of atheists but rather those of devout Quakers. The fact that they followed the major constitutional reference to the necessity of "Oath or Affirmation, to support this Constitution"[30] for all legislative, executive, and judicial officers, Federal and state, with the well-known words "but no religious Test shall ever be required . . ." can be understood only by emphasizing the word "Test." They wanted officeholders to be men who could give assurance of their loyalty by the most impressive and solemn statement—that is one made in a religious spirit—but would have no theological or ecclesiastical "test oaths" such as Europe had been accustomed to. This is why the Constitution in specifically referring to the president's "Oath or Affirmation" requires him to take it "solemnly."[31] Furthermore, commenting on the "no religious Test" clause, Chief Justice Marshall took the ground that:

> . . . The oath which might be exacted—that of fidelity to the Constitution—is prescribed, and no other can be required. Yet, he would be charged with insanity who should contend, that the Legislature might not superadd to the oath directed by the Constitution such other oath of office as its wisdom might suggest.[32]

Opponents of legal oaths are sometimes atheists or agnostics, sometimes earnest believers—especially Quakers, Moravians, and Mennonites, who take very literally the Biblical injunction "Swear not at all."[33] Present-day usage regarding legal oaths in the different states will be discussed in a later chapter.[34]

Those who drafted the Constitution omitted a more specific reference to religious freedom not because of any liking for secularism but rather because they wished at the outset to show their impartiality toward various denominations and allow each state freedom in determining its own internal religious policy. The framers of the document, though living in a secular age much influenced by the factors which brought on the French Revolution, caring little for church dogmas, and not profiting by the religious awakening which swept over the country about a decade later, were, as we have seen, almost all men of Church connections and of convictions of the essential truth of Christianity.[35] As a result, the spirit of the Constitution is Christian. A study of the

membership of the Convention shows that it represented all the leading religious groups in the country.

Furthermore, although only 35 delegates signed the Constitution of the United States, there were some 55 in attendance at various times between May 25 and September 17, 1787. These were representative of the various religious interests of the United States, including two or more members of the Quaker, Roman Catholic, Presbyterian, Episcopal, and Congregational Churches, and one Methodist. The Baptists were the only prominent sect not represented. Their major influence at the time was in Rhode Island, which was unrepresented at the Convention. The largest groups were Presbyterian and Episcopal. It was this diversity of religious connections which led Edmund Randolph to say that it would be impossible to enumerate the many sects that would compose Congress.[36]

As to the Church-State background of the original states, three—Rhode Island, Pennsylvania, and Delaware—had never had a State-Church; five had already virtually discarded the State-Church plan, namely, New Jersey, New York, North Carolina, Georgia, and Virginia; while the remainder retained their State-Churches—in New England, Congregational, and in the South, Episcopal.[37] Even in some of the states where the Church had been disestablished, there were remnants of theological tests. This background will show how difficult it would have been in 1787 for a Federal convention to legislate directly and in a comprehensive way on the subject of religion.

The known utterances on the subject of religious freedom by members of the Constitutional Convention during their formal discussions, as well as the published personal recollections of members regarding the debate, are very few. Charles Pinckney (1757–1824) of South Carolina seems to have been the member most concerned with this subject.[38] In his much discussed "Plan of Government" he had urged, according to one memorandum,

> Habeas Corpus—the Trial by Jury in all cases, Criminal as well as Civil—the Freedom of the Press, and the prevention of Religious Tests, as qualifications to Offices of Trust or Emolument: The three first essentials in Free Governments; the last, a provision the world will expect from you, in the establishment of a system founded on Republican Principles, and in an age so liberal and enlightened as the present.[39]

When his proposal, originally presented on May 29, 1787, was finally reduced to the form of a constitutional clause for formal consideration, it was worded: "The legislature of the United States shall pass no law on the subject of religion."[40] This proposal was referred the same day to the committee of the whole house, which on July 24 was discharged from further consideration of it, and it was turned over to the committee of detail appointed to draft

a constitution upon the basis of the convention's proceedings.[41] Nothing more is recorded of this important proposal in the accounts of the Constitutional Convention, but it was, fortunately, to appear again in somewhat altered form in the first amendment of the Bill of Rights.

In the meantime, in his speech on June 25, Charles Pinckney further referred to the need of "forming a government capable of extending to its citizens all the blessings of civil & religious liberty. . . ."[42] On August 20 he put a new proposal in this form: "No religious test or qualification shall ever be annexed to any oath of office under the authority of the United States."[43] This we know from Madison. The records show that on August 30 this question was further discussed. After adding the words "or affirmation" after the word "oath" in Article 20 (Article VI of the adopted Constitution) so as to satisfy the sentiment of Quakers and some others, Mr. Pinckney moved to add to the article "but no religious test shall ever be required as a qualification to any office or public trust under [the authority of] the U. States." The form of the motion was unanimously agreed to. Roger Sherman, according to Madison, "thought it unnecessary, the prevailing liberality being a sufficient security against such tests,"[44] but Gouverneur Morris and General Pinckney "approved the motion." The whole article was then accepted, North Carolina alone voting "No" and Maryland divided. The words in brackets were later omitted, evidently because thought superfluous by the committee on "Stile."

Thus, due to the efforts of Charles Pinckney, a young man of only twenty-nine, seconded by those of his distinguished second cousin, Gen. Charles Cotesworth Pinckney (1746–1825), and Gouverneur Morris (1752–1816), the first constitutional steps were taken to place the Federal government squarely on the side of religious freedom.

In recent discussions of religious freedom and Church–State separation in the United States attention has been so much centered constitutionally on the Bill of Rights that the importance of this provision in the original Constitution as a bulwark of Church–State separation has been largely overlooked. As a matter of fact it was and is important in preventing religious tests for Federal office—a provision later extended to all the states. It went far in thwarting any State Church in the United States; for it would be almost impossible to establish such a Church, since no Church has more than a fifth of the population. Congress as constituted with men and women from all the denominations could never unite in selecting any one body for this privilege. This has been so evident from the time of the founding of the government that it is one reason why the First Amendment must be interpreted more broadly than merely as preventing the state establishment of religion which had already been made almost impossible.

James Madison (1751–1836), whom we have shown to be an exceptionally

warm friend of religious freedom,[45] proposed with Mr. Pinckney on September 14 "to insert in the list of powers vested in Congress a power—'to establish an University, in which no preferences or distinctions should be allowed on account of religion.'" This proposal, to which he refers in his "Notes," was supported by James Wilson, but Gouverneur Morris stated: "It is not necessary. The exclusive power at the Seat of Government, will reach the object."[46] This question was lost by a vote of 6 to 4, with one state (Connecticut) divided.

The following letter is, as far as is known, the only communication addressed to the president and members of the Constitutional Convention by any individual petitioner on the subject of religious freedom; it was from a Philadelphia Jew by the name of Jonas Phillips, dated September 7, 1787.

Sires

With leave and submission I address myself To those in whome there is wisdom understanding and knowledge. They are the honourable personages appointed and Made overseers of a part of the terrestrial globe of the Earth, Namely the 13 united states of america in Convention Assembled, the Lord preserve them amen—

I the subscriber being one of the people called Jews of the City of Philadelphia, a people scattered and despersed among all nations do behold with Concern that among the laws in the Constitution of Pennsylvania their is a Clause Sect. 10 to viz—I do believe in one God the Creature [*sic*—Creator] and governour of the universe the Rewarder of the good and the punisher of the wicked—and I do acknowledge the scriptures of the old and New testement to be given by a devine inspiration—to swear and believe that the new testement was given by devine inspiration is absolutly against the Religious principle of a Jew. and is against his Conscience to take any such oath—By the above law a Jew is deprived of holding any publick office or place of Goverment which is a Contridectory to the bill of Right Sect 2. viz

That all men have a natural and unalienable Right To worship almighty God according to the dectates of their own Conscience and understanding, and that no man aught or of Right can be Compelled to attend any Relegious Worship or Erect or support any place of worship or Maintain any minister contrary to or against his own free will and Consent nor Can any man who acknowledges the being of a God be Justly deprived or abridged of any Civil Right as a Citizen on account of his Religious sentiments or peculiar mode of Religious Worship, and that no authority Can or aught to be vested in or assumed by any power what ever that shall in any Case interfere or in any manner Controul the Right of Conscience in the free Exercise of Religious Worship—

It is well known among all the Citizens of the 13 united States that the Jews have been true and faithful whigs, and during the late Contest with England they have been foremost in aiding and assisting the States with their lifes and fortunes, they have supported the Cause, have bravely faught and bleed for liberty which they Can not Enjoy—

Therefore if the honourable Convention shall in ther Wisdom think fit and alter the

said oath and leave out the words to viz—and I do acknoweledge the scripture of the new testement to be given by devine inspiration then the Israeletes will think them self happy to live under a goverment where all Relegious societys are on an Eaquel footing—I solecet this favour for my self my Childreen and posterity and for the benefit of all the Israeletes through the 13 united States of america

My prayers is unto the Lord. May the people of this States Rise up as a great and young lion, May they prevail against their Enemies, May the degrees of honour of his Excellencey the president of the Convention George Washington, be Extollet and Raise up. May Every one speak of his glorious Exploits. May God prolong his days among us in this land of Liberty—May he lead the armies against his Enemys as he has done hereuntofore—May God Extend peace unto the united States—May they get up to the highest Prosperetys—May God Extend peace to hem and their seed after them so long as the Sun and moon Endureth—and may the almighty God of our father Abraham Isaac and Jacob enduc this Noble Assembly with wisdom Judgement and unamity in their Councells, and may they have the Satisfaction to see that their present toil and labour for the wellfair of the united States may be approved of, Through all the world and perticular by the united Sates of america is the ardent prayer of Sires

Your Most devoted obed Servant
JONAS PHILLIPS[47]

This somewhat illiterate but sincere letter received committee reference.

An important group memorial on the subject of religious freedom was presented to the Convention by the Baptists of New England. They sent to Philadelphia their most eminent protagonist, the Reverend Isaac Backus (1724–1806), to plead the cause.[48] Here is part of the plea:

It has been said by a celebrated writer in politics, that but two things were worth contending for,—Religion and Liberty. For the latter we are at present nobly exerting ourselves through all this extensive continent; and surely no one whose bosom feels the patriotic glow in behalf of civil liberty, can remain torpid to the more ennobling flame of Religious Freedom.

The free exercises of private judgment, and the unalienable rights of conscience, are of too high a rank and dignity to be submitted to the decrees of councils, or the imperfect laws of fallible legislator. The merciful Father of mankind is the alone Lord of conscience. Establishments may be enabled to confer worldly distinctions and secular importance. They may make hypocrites, but cannot create Christians. They have been reared by craft or power, but liberty never flourished perfectly under their control. That liberty, virtue, and public happiness can be supported without them, this flourishing province (Pennsylvania) is a glorious testimony; and a view of it would be sufficient to invalidate all the most elaborate arguments ever adduced in support of them.

It may now be asked—What is the liberty desired? The answer is; as the kingdom of Christ is not of this world, and religion is a concern between God and the soul with

which no human authority can intermeddle; consistently with the principles of Christianity, and according to the dictates of Protestantism, we claim and expect the liberty of worshipping God according to our consciences, not being obliged to support a ministry we cannot attend, while we demean ourselves as faithful subjects. These we have an undoubted right to, as men, as Christians and by charter as inhabitants of Massachusetts Bay.[49]

In view of the fact that there had been much diversity of opinion in the states represented on the subject of religious freedom, and that many of them were themselves still discussing the question of Church-State separation, the Constitutional Convention probably went as far as it could at the time; but the action already taken by Virginia, in doing away with the Episcopal Establishment and providing complete religious freedom, pointed the way clearly to the ultimate goal.

Since a bill of rights as generally understood at the time included both civil and religious freedom, one further reference to the doings of the Convention is in order. Gerry of Massachusetts proposed September 12, 1787, and Colonel Mason of Virginia seconded a motion for a committee to prepare a bill of rights, but it lost by a tie vote.[50]

When Washington passed through Philadelphia on his way to New York to assume the administration of the new government, he was met by thousands of cheering people. It was noticeable that the clergy formed a conspicuous part in the procession. We are told that

> They marched arm in arm, to illustrate the General Union. Care was taken to associate ministers of the most dissimilar opinions with each other, to display the promotion of Christian charity by free institutions. "The rabbi of the Jews, with a minister of the gospel on each side, was a most delightful sight." It exhibited the political equality, not only of Christian denominations, but of worthy men of every belief.

Washington, moved by the welcome and its significance, said:

> When I contemplate the interposition of Providence, as it has been visibly manifested in guiding us through the Revolution, in preparing us for the General Government, and in conciliating the good will of the people of America towards one another in its adoption, I feel myself oppressed and overwhelmed with a sense of the Divine munificence.[51]

Nothing could show more clearly the belief in divine guidance prevailing in this country at the time of the adoption of our Constitution. And yet the Baptists and some other Christian groups deeply interested in religious freedom wished that the Convention had gone further. Here, for instance, is an address to Washington from the Baptist churches in Virginia, dated August 8, 1789:

When the Constitution first made its appearance in Virginia, we, as a society, had unusual strugglings of mind, fearing that the liberty of conscience (dearer to us than property or life) was not sufficiently secured. Perhaps our jealousies were heightened on account of the usage we received in Virginia under the regal government, when mobs, bonds, fines, and prisons were our frequent repast,—convinced on the one hand, that without an effective national Government the States would fall into disunion and all the consequent evils and, on the other hand, fearing we should be accessory to some religious oppression should any one society in the Union preponderate over all the rest. But, amidst all the inquietudes of mind, our consolation arose from this consideration: —the plan must be good, for it bears the signature of a tried, trusty friend; and if religious liberty is rather insecure in the Constitution, the Administration will certainly prevent all oppression, for a *Washington* will preside.[52]

The insecurity referred to was felt by many others besides Baptists; and was soon to be remedied by the adoption of the Federal Bill of Rights.

The General Assembly of the Presbyterian Church in the United States of America, one hundred and fifty years after the adoption of the Constitution, clearly recognized the historic factors which led to the separation of Church and State under the United States government while leaving their relation, if any, within the several states to the decision of the states themselves. It said in 1939:

There is such a thing as the American dream. The American dream was fashioned in the imagination of our Anglo-Saxon forefathers as they longed for a richer life, fuller liberty, and an opportunity for domestic and civic happiness. . . . In the thirteen original colonies from which our nation was formed, seven had established churches of the Anglican type, three established churches of the Congregational form, and three no established church. When the representatives of the thirteen colonies met in constitutional convention to formulate a constitution for the infant republic they soon discovered that there was no possibility of compromise among those who favored a church establishment of one sort or another and those who were opposed to any establishment, and the happy outcome was the decision now embodied in the Constitution of the United States, that there should be no established church in the United States of America. At the same time, these fundamental principles which have guided our nation for 150 years and which are based upon the separation of church and state were formulated and for the most part have been maintained.[53]

(2) THE LATER OPINIONS OF PARTICIPANTS AND OTHER PUBLIC MEN

Evidence that the Constitutional Convention was not much concerned with the question of religion because it assumed that this was a matter under state rather than Federal jurisdiction, is found in the *Federalist*. In these eighty-five papers by Hamilton, Madison, and Jay, which appeared in the six months beginning October 27, 1787, there is found only a single reference to religion

or the Church. This is by Madison, who mentions "A zeal for different opinions concerning religion" as one of the "latent causes of faction" which appear in civil society.[54] The framers of the Constitution believed that the religious issue could best be left to the states, which had already begun, under the leadership of Virginia,[55] to handle it constructively and wisely. This point of view is shown by the opinions expressed by some of them when they returned home and either supported the Constitution as drafted or asked that it be amended.

It is important to know what representative members of the Constitutional Convention thought of the meaning and significance of the clause they had drafted excluding religious tests for all Federal officeholders.

Luther Martin (*c.* 1748–1826), in his "Genuine Information" delivered to the legislature of Maryland on November 29, 1787, had this to say about it:

> The part of the system which provides, that *no religious test* shall ever be required as a qualification to any office or public trust under the United States, was adopted by a great majority of the convention, and without much debate; however, there were some members so unfashionable as to think, that a *belief of the existence of a Deity,* and of a *state of future rewards and punishments* would be some security for the good conduct of our rulers, and that, in a Christian country, it would be *at least decent* to hold out some distinction between the professors of Christianity and downright infidelity or paganism.[56]

How much difference of opinion there was on the government's attitude toward religion and the churches we do not know. Madison is our authority for the statement that there was "discord of religious opinion within the Convention. . . ."[57]

Edmund Randolph (1753–1813), speaking on June 10, 1788, in the Virginia convention on the subject of the constitutional provisions for religious freedom, said:

> Freedom of religion is said to be in danger. I will candidly say, I once thought that it was, and felt great repugnance to the constitution for that reason. I am willing to acknowledge my apprehensions removed—and I will inform you by what process of reasoning I did remove them. The constitution provides, that "the senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath, or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States." It has been said, that if the exclusion of the religious test were an exception from the general power of congress, the power over religion would remain. I inform those who are of this opinion, that no power is given expressly to congress over religion. The senators and representatives, members of the state legislatures, and executive and judicial officers, are bound by oath, or affirmation, to support this constitution. This

only binds them to support it in the exercise of the powers constitutionally given it. The exclusion of religious tests is an exception from this general provision, with respect to oaths, or affirmations. Although officers, &c. are to swear that they will support this constitution, yet they are not bound to support one mode of worship, or to adhere to one particular sect. It puts all sects on the same footing. A man of abilities and character, of any sect whatever, may be admitted to any office or public trust under the United States. I am a friend to a variety of sects, because they keep one another in order. How many different sects are we composed of throughout the United States? How many different sects will be in congress? We cannot enumerate the sects that may be in congress. And there are so many now in the United States that they will prevent the establishment of any one sect in prejudice to the rest, and will forever oppose all attempts to infringe religious liberty. If such an attempt be made, will not the alarm be sounded throughout America? If congress be as wicked as we are foretold they will, they would not run the risk of exciting the resentment of all, or most of the religious sects in America.[58]

James Madison (1750/51–1836) seemed to think at the time that the Constitution as drafted gave no power to the Federal government to interfere in matters religious, and that this fact, along with the exemption of religious tests in connection with Federal offices by "the general legislature"—that is, Congress—would, with the support of public opinion, adequately protect religious freedom also in the states. But to him the most important guarantee of freedom was found in the multiplicity of denominations in the United States, no one of which could become dominant.

Speaking in the Virginia convention on June 12, 1788, on Patrick Henry's objection that the new Constitution did not expressly protect religion, Madison said:

The honorable member has introduced the subject of religion. Religion is not guarded—there is no bill of rights declaring that religion should be secure. Is a bill of rights a security for religion? Would the bill of rights, in this state, exempt the people from paying for the support of one particular sect, if such sect were exclusively established by law? If there were a majority of one sect, a bill of rights would be a poor protection for liberty. Happily for the states, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest. Fortunately for this commonwealth, a majority of the people are decidedly against any exclusive establishment—I believe it to be so in the other states. There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it, would be a most flagrant usurpation. I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom. It is better that this security should be depended upon from the general legisla-

ture, than from one particular state. A particular state might concur in one religious project. But the United States abound in such a variety of sects, that it is a strong security against religious persecution, and it is sufficient to authorise a conclusion, that no one sect will ever be able to outnumber or depress the rest.[59]

One more statement by Madison is worth quoting. He wrote to Jefferson October 17, 1788, giving at some length his views on the advisability of adding a bill of rights to the Federal Constitution.

My own opinion has always been in favor of a bill of rights, provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time, I have never thought the omission a material defect, nor been anxious to supply it even by subsequent amendment for any other reason than that it is anxiously desired by others. I have favored it because I suppose it might be of use and if properly executed, could not be of disservice. . . . There is great reason to fear that positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience in particular, if submitted to public definition, would be narrowed much more than they are likely ever to be by an assumed power. One of the objections in New England was that the Constitution by prohibiting religious tests, opened a door for Jews, Turks and infidels. . . . In Virginia I have seen the bill of rights violated in every instance where it has been opposed to a popular current. Notwithstanding the explicit provisions contained in that instrument for the rights of Conscience, it is well known that a religious establishment would have taken place in that State, if the Legislative majority had found, as they expected, a majority of the people in favor of the measure; and I am persuaded that if a majority of the people were now of one sect, the measure would still take place, and on narrower grounds than it was then proposed, notwithstanding the additional obstacle which the law has since created. Wherever the real power in a government lies, there is the danger of oppression.[60]

Let us now turn to the opinion of another member of the Constitutional Convention—Oliver Ellsworth (1745–1807) of Connecticut, later chief justice of the United States. From November, 1787, to March, 1788, he published simultaneously in the *Connecticut Courant* at Hartford and the *American Mercury* at Litchfield a series of anonymous letters on the proposed Federal Constitution, signed "A Landholder." In the seventh letter of the series he said:

Some very worthy persons, who have not had great advantages for information, have objected against that clause in the constitution which provides, that no religious test shall ever be required as a qualification to any office or public trust under the United States. They have been afraid that this clause is unfavorable to religion. But my countrymen, the sole purpose and effect of it is to exclude persecution, and to secure to you the important right of religious liberty. We are almost the only people in the world, who have a full enjoyment of this important right of human nature. In our

country every man has a right to worship God in that way which is most agreeable to his conscience. If he be a good and peaceable person he is liable to no penalties or incapacities on account of his religious sentiments; or in other words, he is not subject to persecution. . . .

A religious test is an act to be done, or profession to be made, relating to religion (such as partaking of the sacrament according to certain rites and forms, or declaring one's belief of certain doctrines,) for the purpose of determining whether his religious opinions are such, that he is admissable to a publick office. A test in favour of any one denomination of Christians would be to the last degree absurd in the United States. If it were in favour of either congregationalists, presbyterians, episcopalians, baptists, or quakers, it would incapacitate more than three-fourths of the American citizens for any publick office; and thus degrade them from the rank of freemen. There need no argument to prove that the majority of our citizens would never submit to this indignity.

If any test-act were to be made, perhaps the least exceptionable would be one, requiring all persons appointed to office to declare, at the time of their admission, their belief in the being of a God, and in the divine authority of the scriptures. In favour of such a test, it may be said, that one who believes these great truths, will not be so likely to violate his obligations to his country, as one who disbelieves them; we may have greater confidence in his integrity. But I answer: His making a declaration of such a belief is no security at all. For suppose him to be an unprincipled man, who believes neither the word nor the being of God; and to be governed merely by selfish motives; how easy is it for him to dissemble! how easy is it for him to make a public declaration of his belief in the creed which the law prescribes, and excuse himself by calling it a mere formality. This is the case with the test-laws and creeds in England. . . . In short, test-laws are utterly ineffectual; they are no security at all; because men of loose principles will, by an external compliance, evade them. If they exclude any persons, it will be honest men, men of principle, who will rather suffer an injury, than act contrary to the dictates of their consciences. If we mean to have those appointed to public offices, who are sincere friends to religion, we, the people who appoint them, must take care to choose such characters; and not rely upon such cob-web barriers as test-laws are. . . .

But while I assert the rights of religious liberty, I would not deny that the civil power has a right, in some cases, to interfere in matters of religion. It has a right to prohibit and punish gross immoralities and impieties; because the open practice of these is of evil example and detriment. For this reason, I heartily approve of our laws against drunkenness, profane swearing, blasphemy, and professed atheism. But in this state, we have never thought it expedient to adopt a test-law; and yet I sincerely believe we have as great a proportion of religion and morality, as they have in England, where every person who holds a public office, must either be a saint by law, or a hypocrite by practice. A test-law is the parent of hypocrisy, and the offspring of error and the spirit of persecution. Legislatures have no right to set up an inquisition, and examine into the private opinions of men. Test-laws are useless and ineffectual, unjust and tyran-

nical; therefore the Convention have done wisely in excluding this engine of persecution, and providing that no religious test shall ever be required.[61]

We have left till now the most weighty of all the comments on the subject by participants in the Constitutional Convention—that from its presiding officer, George Washington. The *Massachusetts Centinel* for December 5, 1789, contains correspondence between the Presbyterian churches in northern New England—a group of Scotch-Irish centering in Derry and Londonderry—and President Washington regarding the omission of any reference to the Christian religion in the Constitution. It shows that this matter was the cause of some misgivings in Church circles at the time, and that Washington's reply did much to relieve them. As these letters do not appear in the standard collections of Washington's writings, and I have never seen them quoted at any length,[62] they are here reproduced in full.

Mr. Russell,

The Presbytery of the Eastward, convened at Newbury-Port, in their Address to THE PRESIDENT of the United States, in his late tour, say "Among the objections to the Federal Constitution, we never considered the want of a religious test—that grand engine of persecution in every tyrant's hand. But, we should not have been alone in rejoicing, to have seen some *explicit* acknowledgment of *the only* TRUE GOD *and* JESUS CHRIST *whom he hath sent,* inserted, somewhere in the MAGNA CHARTA of our country. We are happy, to find, however, that this defect has been amply remedied, in the face of all the world; by the piety and devotion in which your first publick act of office was performed, by the religious observance of the Sabbath, and of the publick worship of GOD, of which you have set so eminent an example—and by the warm strains of christian and devout affection, which run through your late Proclamation for a general *Thanksgiving.*" As similar sentiments have been held by several persons in the United States, and as the President's reply is a complete answer to the above objection, I wish you to publish it—it having never appeared in a Boston paper.

Yours, CLERICUS.

To the MINISTERS *and* Ruling ELDERS *delegated to represent the Churches in Massachusetts and New-Hampshire, which compose the first* PRESBYTERY *of the* Eastward.

Gentlemen,

The affectionate welcome, which you are pleased to give me to the eastern parts of the Union, would leave me without excuse, did I fail to acknowledge the sensibility which it awakens; and to express the most sincere return, that a grateful sense of your goodness can suggest.

To be approved by the praise-worthy, is a wish as natural to becoming ambition, as its consequence is flattering to our self-love.

I am, indeed, much indebted to the favourable sentiments, which you entertain towards me, and it will be my study to deserve them.

The tribute of thanksgiving, which you offer to the *gracious* FATHER OF LIGHTS, for his inspiration of our publick councils with wisdom and firmness to complete the National Constitution, is worthy of men, who, devoted to the pious purposes of religion, desire their accomplishment by such means as advance the temporal happiness of their fellow men. And, here, I am persuaded, you will permit me to observe, that *the path of true piety is so plain, as to require but little* POLITICAL *direction.*

To this consideration we ought to ascribe the absence of any regulation respecting religion from the Magna Charta *of our country.* To the guidance of the Ministers of the Gospel, this important object is, perhaps, more properly committed. It will be your care to instruct the ignorant, and to reclaim the devious: And in the progress of morality and science, to which our Government will give every furtherance, we may confidently expect the advancement of true religion, and the completion of our happiness.

I pray the munificent Rewarder of virtue, that *your* agency in this work, may receive its compensation here and hereafter.

G. Washington.[63]

Somewhat similar views were expressed in a letter written the same year by the president to the United Baptist Churches in Virginia, in which he stressed his conviction that the Constitution safeguarded religious freedom.[64] In this respect his attitude was characteristic of that of most of the founders of the government and of the leaders of public opinion in the different states.

Section 2. THE BILL OF RIGHTS (1789–91)

There had been considerable demand in the Constitutional Convention of 1787 for a bill of rights, including the guarantee of complete religious freedom, but the assembly knew that some states were too wedded to their Congregational or Episcopal establishments to face the issue squarely. So nothing came of the proposal, made near the close of the session, that a bill of rights be adopted. Here is the record from the minutes of the Convention, September 12, 1787: "It was moved and seconded to appoint a Committee to prepare a Bill of Rights which passed in the negative" (by a vote of 0 to 10).[65]

Madison's *Journal* contains these additional details:

Col: Mason . . . wished the plan had been prefaced with a Bill of Rights, & would second a Motion if made for the purpose—It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours.

Mr. Gerry concurred in the idea & moved for a Committee to prepare a Bill of Rights. Col: Mason 2ded the motion.

Mr. Sherman. was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are

sufficient—There were many cases where juries are proper which cannot be discriminated. The Legislature may be safely trusted.

Col: Mason. The Laws of the U. S. are to be paramount to State Bills of Rights. On the question for a Come to prepare a Bill of Rights.

N. H. no. Mas. abst. Ct. no. N— J— no. Pa. no. Del— no. Md no. Va no. N— C. no. S— C— no— Geo— no. [Ayes—0; noes—10; absent—1.][66]

Evidently among the factors which controlled the convention in taking no action on the proposed bill of rights were two of special importance: the feeling of most of the delegates that this matter could wisely be left to the states, several of which had already taken forward-looking action, and the realization that they could not adopt such a bill without including religious freedom, and this might shipwreck the ratification of the Constitution in certain states with establishments to which a majority of their leading citizens were devoted. So it seemed best to make haste slowly.

(1) THE ADOPTION OF THE CHURCH-STATE SEPARATION AND OTHER GUARANTEES

Bills of rights already existed in eight of the new states, and at least four of them were used by Madison as the basis for drafting the Bill presently adopted by Congress. Furthermore, half of the recently formed states had provided, either in their bills of rights or in their constitutions, guarantees of religious freedom[67]—that is, freedom of faith and worship, and the equality of religious bodies before the law—which the Supreme Court has always upheld.

On May 4, 1789, four days after the inauguration of President Washington, Madison announced to the House of Representatives, then assembled in Federal Hall, New York, that "he intended to bring on the subject of Amendments to the Constitution, on the fourth Monday of this Month." It was well known that he had a bill of rights in mind, something that would protect the nation against the possible arbitrary acts of government. This is a matter which Jefferson also had always had much at heart.

On June 8 Madison urged the adoption of the Bill of Rights. He stated that it was no secret that many Americans, "respectable for their talents and respectable for the jealousy which they have for their liberty," were dissatisfied with the Constitution as it stood because it "did not contain effectual provisions against encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power." "We ought not to disregard their inclination," he urged, "but, on principles of amity and moderation, conform to their wishes and expressly declare the great rights of mankind secured under this Constitution."

The House, after a full discussion recorded later in this section, agreed upon

the proposed amendments and sent them to the Senate on August 24. Discussion of differences between the two Houses followed; and on September 25, 1789, the Senate concurred "in the amendments proposed by the House of Representatives to the amendments of the Senate."

The joint resolution embodying the Bill of Rights bore a preamble which stated that it was issued because "the conventions of a number of states" had "at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added," and because "extending the grounds of public confidence in the government will best secure the beneficent ends" of its institution.[68]

The first of the amendments to the Constitution thus adopted by Congress in 1789 and ratified by the requisite number of states[69] in 1791, is of prime importance in connection with the relations of Church and State in the United States. It reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.[70]

These rights are interrelated. They are all of importance from the standpoint of the Churches. Freedom of speech is related to preaching; freedom of the press to religious journalism; freedom of assembly and petition to church meetings; but here we are mainly concerned with religious freedom and Church–State separation.

The original Constitution had gone far by guaranteeing to all citizens personal religious freedom in the matter of Federal officeholding, and in thereby implying Federal Church–State separation. The First Amendment went further in prohibiting Congress from establishing a Church or preventing freedom of worship. It was important both from the standpoint of assuring that there be no tie-up between the government and any religious body, and in further guaranteeing religious rights, but the former is perhaps the more important provision. It is mentioned first, and is to a large extent the basis on which religious freedom can be assured. This is doubly true now that under the Supreme Court's interpretation of the Fourteenth Amendment the guarantees of the First are also made applicable to the states.

These points need emphasis. It is to be noted that the first portion of this amendment dealing with religion is divided into two separate but closely interrelated parts. The first prevents the "establishment" by law of any Church, and goes somewhat further by the use of the word "respecting," which pro-

hibits any law relating to the Church specifically designed to control its activities. The recent Supreme Court decisions in the New Jersey bus and Champaign released-time cases show that the clause must be broadly interpreted in the interest of maintaining the separation of the two institutions.[71]

The second portion of the religious clause guarantees religious freedom: every person or group can worship God as he, she, or it pleases, without any State interference so long as the usual requirements of law and order are observed.

An evidence that the guarantees of the First Amendment commended themselves to the American people after long experience in living under them is shown by the fact that they were also incorporated, March 11, 1861, as part of the constitution then adopted for the Confederate States of America.[72]

To understand the origin of these and the other provisions, the experience of Virginia (1776) and Massachusetts (1780) in adopting their bills of rights should be studied, as well as the debates in the various state conventions called to consider ratifying the Constitution.[73]

A reading of these and other public utterances and papers of the time shows that many Federalists thought these protections of liberty superfluous. They were concerned with protecting the government against mass public opinion at any given moment rather than in protecting the people against themselves or their own government. The Bill of Rights assured, as far as a duly adopted charter could, the preservation of true liberty—the rights of the citizen which could not be taken away either by an excited populace or by reactionary forces in the State.

When the First Amendment was drawn the fight against established churches had already been won in four states, and several new state constitutions forbade the arrangement. Disestablishment was progressing by state action, although a few states wished to preserve the status quo. The main purpose of the Amendment, as Judge Story (1779–1845), one of the most eminent of constitutional historians, asserted, was not to injure Christianity

> but to exclude all rivalry among Christian sects and to prevent any national ecclesiastical establishment which should give to any hierarchy the exclusive patronage of the national government.[74]

It has been said that history shows that "Whosoever has power alone has civil liberty." There has been some justification for the claim in our own history, but the Bill of Rights was a brave attempt to prevent this condition. This is why Jefferson so heartily favored such a bill. Its omission from the Constitution itself had greatly pained him. He wrote from Paris to Madison under date of December 20, 1787:

I will now add what I do not like; first, the omission of a bill of rights, providing clearly and without the aid of sophisms, for freedom of religion, freedom of the press, etc. . . . Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no government should refuse or rest on inference. . . .[75]

A careful study of the preliminaries in Congress leading up to the adoption of the epoch-making clause in behalf of religious freedom seems necessary. This is difficult to make with entire confidence in details because the records are meager and inadequately prepared and edited. It shows, however, that on June 8, 1789, Madison offered a series of proposed Constitutional amendments for the approval of the House of Representatives. These included this statement to be added in Article I, Sections 9 and 10, of the original Constitution:

The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.[76]

The word "national" was added to meet the scruples of states with an Established Church. It will be noticed that the last clause proposed to extend the religious guarantee to the states, thus going further than the later Federal Bill of Rights.

Madison's proposals were referred to the committee of the whole,[77] but on July 21 this committee was discharged from further consideration of this matter and the House appointed a representative "committee of eleven"[78] with a member from each state to consider both Madison's amendments and those suggested by the various states—Madison being on the committee. The special committee, under the chairmanship of John Vining (1758–1862) of Delaware, reported on July 28; the report was laid on the table.[79] It was taken up August 15, when the House resolved itself again into a committee of the whole.[80] There was much discussion over the proposed religious freedom and Church–State separation amendment. The debate in the House is so important for the understanding of the historical foundations of our religious freedom that the record is here given in full from the *Annals of Congress* for August 15, 1789.[81]

AMENDMENTS TO THE CONSTITUTION

The House again went into a Committee of the whole on the proposed amendments to the constitution, Mr. BOUDINOT in the chair.

The fourth proposition being under consideration, as follows:

Article 1. Section 9. Between paragraphs two and three insert "no religion shall be established by law, nor shall the equal rights of conscience be infringed."

Mr. SYLVESTER had some doubts of the propriety of the mode of expression used in this paragraph. He apprehended that it was liable to a construction different from what had been made by the committee. He feared it might be thought to have a tendency to abolish religion altogether.

Mr. VINING suggested the propriety of transposing the two members of the sentence.

Mr. GERRY said it would read better if it was, that no religious doctrine shall be established by law.

Mr. SHERMAN thought the amendment altogether unnecessary, inasmuch as Congress had no authority whatever delegated to them by the constitution to make religious establishments; he would, therefore, move to have it struck out.

Mr. [Daniel] CARROLL.[82]—As the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand; and as many sects have concurred in opinion that they are not well secured under the present constitution, he said he was much in favor of adopting the words. He thought it would tend more towards conciliating the minds of the people to the Government than almost any other amendment he had heard proposed. He would not contend with gentlemen about the phraseology, his object was to secure the substance in such a manner as to satisfy the wishes of the honest part of the community.

Mr. MADISON said, he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. Whether the words are necessary or not, he did not mean to say, but they had been required by some of the State Conventions, who seemed to entertain an opinion that under the clause of the constitution, which gave power to Congress to make all laws necessary and proper to carry into execution the constitution, and the laws made under it, enabled them to make laws of such a nature as might infringe the rights of conscience, and establish a national religion; to prevent these effects he presumed the amendment was intended, and he thought it as well expressed as the nature of the language would admit.

Mr. HUNTINGTON said that he feared, with the gentleman first up on this subject, that the words might be taken in such latitude as to be extremely hurtful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia; but others might find it convenient to put another construction upon it. The ministers of their congregations to the Eastward were maintained by the contributions of those who belonged to their society; the expense of building meetinghouses was contributed in the same manner. These things were regulated by by-laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers, or building of places of worship might be construed into a religious establishment.

By the charter of Rhode Island, no religion could be established by law; he could give a history of the effects of such a regulation; indeed the people were now enjoying the blessed fruits of it. He hoped, therefore, the amendment would be made in such

a way as to secure the rights of conscience, and a free exercise of the rights of religion, but not to patronize those who professed no religion at all.

Mr. MADISON thought, if the word national was inserted before religion, it would satisfy the minds of honorable gentlemen. He believed that the people feared one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform. He thought if the word national was introduced, it would point the amendment directly to the object it was intended to prevent.

Mr. LIVERMORE was not satisfied with that amendment; but he did not wish them to dwell long on the subject. He thought it would be better if it was altered, and made to read in this manner, that Congress shall make no laws touching religion, or infringing the rights of conscience.

Mr. GERRY did not like the term national, proposed by the gentleman from Virginia, and he hoped it would not be adopted by the House. It brought to his mind some observations that had taken place in the conventions at the time they were considering the present constitution. It had been insisted upon by those who were called antifederalists, that this form of Government consolidated the Union; the honorable gentleman's motion shows that he considers it in the same light. Those who were called antifederalists at that time complained that they had injustice done them by the title, because they were in favor of a Federal Government, and the others were in favor of a national one; the federalists were for ratifying the constitution as it stood, and the others not until amendments were made. Their names then ought not to have been distinguished by federalists and antifederalists, but rats and antirats [evidently ratificationists and antiratificationists].

Mr. MADISON withdrew his motion, but observed that the words "no national religion shall be established by law," did not imply that the Government was a national one; the question was then taken on Livermore's motion, and passed in the affirmative, thirty-one for, and twenty against it.[83]

The Mr. Livermore referred to in the *Journal* of Congress is Samuel Livermore (1732–1803), a man who has received almost no public credit for his services in suggesting the essential part of the phraseology of our religious freedom guarantee, though this was somewhat modified in later conference. Even the otherwise excellent sketch of him in the *Dictionary of American Biography* does not refer at all to this contribution, and no reference to it is made in the standard American histories. We have dealt with his career at some length elsewhere.[84]

Throughout this momentous debate there were references to the "anxiety" felt by large sections of the people over the omission of a bill of rights from the Constitution. This was well expressed by Madison in the debate in the House, August 15:

I appeal to the gentlemen who have heard the voice of the country, to those who have

attended the debates of the State conventions, whether the amendments now proposed are not those most strenuously required by the opponents to the constitution? . . . Have not the people been told that the rights of conscience, the freedom of speech, the liberty of the press, and trial by jury were in jeopardy? that they ought not to adopt the constitution until those important rights were secured to them?[85]

The committee of eleven had also recommended adding a clause to the Constitution to the effect that "no person religiously scrupulous shall be compelled to bear arms,"[86] a clause based on the proposals of Virginia and Carolina. This proposal was strongly supported[87] and favored on August 17, and the reasons for its final omission are not clear.

In the same report the Committee of Eleven included a recommendation long urged by Madison. The *Journal* thus refers to this matter:

The committee then proceeded to the fifth proposition:

Article 1, section 10, between the first and second paragraph, insert "no State shall infringe the equal rights of conscience, nor the freedom of speech or of the press, nor of the right of trial by jury in criminal cases."

Mr. TUCKER.—This is offered, I presume, as an amendment to the constitution of the United States, but it goes only to the alteration of the constitutions of particular States. It will be much beter, I apprehend, to leave the State Governments to themselves, and not to interfere with them more than we already do; and that is thought by many to be rather too much. I therefore move, sir, to strike out these words.

Mr. Madison conceived this to be the most valuable amendment in the whole list. If there was any reason to restrain the Government of the United States from infringing upon these essential rights, it was equally necessary that they should be secured against the State Governments. He thought that if they provided against the one, it was as necessary to provide against the other, and was satisfied that it would be equally grateful to the people.

Mr. LIVERMORE had no great objection to the sentiment, but he thought it not well expressed. He wished to make it an affirmative proposition; "the equal rights of conscience, the freedom of speech or of the press, and the right of trial by jury in criminal cases, shall not be infringed by any State."

This transposition being agreed to, and Mr. TUCKER's motion being rejected, the clause was adopted.[88]

Unfortunately the clause thus approved by the House was among those "disagreed to" by the Senate on September 21, undoubtedly due mainly to state rights feelings.[89] It is interesting to note Livermore again supporting Madison on a broad-gauge proposal regarding religious freedom.

In the debate on August 18 and 23, Mr. Tucker (Thomas Tucker, 1745–1828) of South Carolina proposed the addition of the word "other" between the words "No" and "religious Test" in Article VI; but this was finally "passed

in the negative"—that is, voted down; a wise decision, for otherwise the oath or affirmation for officeholders provided for would have been designated specifically as a religious test, which it was not intended to be, but rather as an assurance of action taken with great solemnity as in the presence of God.

On August 19 Roger Sherman of Connecticut again pressed his idea that the amendments should not be inserted in the original Constitution but placed in separate articles in a supplement,[90] and won his point, supported by Livermore[91] and others. The next day, August 20, the "supplement" idea for all the amendments was adopted.

On motion of Mr. Ames (Fisher Ames [1758–1805] of Massachusetts) the amendment regarding religious freedom was altered so as to read, "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience."[92]

The exact arrangement of the amendments was referred August 22 to a subcommittee consisting of Egbert Benson as chairman, with Roger Sherman and Theodore Sedgwick, "who were directed to arrange the said amendments and make report thereof."[93] Evidently the committee's duties were similar to those of the committee "on style" of the original Constitution. Indeed the records refer to it in one place as the committee on "style and arrangement."

The next and final action of the House was taken two days later on August 24th when the *Journal* states that

> Mr. Benson, from the committee appointed for the purpose, reported an arrangement of the articles of amendment to the constitution of the United States, as agreed to by the House on Friday last; also, a resolution prefixed to the same, which resolution was twice read and agreed to by the House as follows:
>
> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* (two-thirds of both Houses deeming it necessary,) That the following articles be proposed to the Legislatures of the several States as amendments to the constitution of the United States, all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes as part of the said constitution.[94]

The Mr. Benson referred to was Egbert Benson (1746–1833), a distinguished New York jurist for four years a member of the Continental Congress, who had taken the lead in the New York legislature in advocating the acceptance of the Federal Constitution.

After agreeing to this resolution the House

> *Ordered.* That the Clerk of this House do carry to the Senate a fair engrossed copy of the said proposed articles of amendment, and desire their concurrence.[95]

On the following day (August 25) the Senate received a communication

from the House requesting its concurrence with the amendment adopted. A lively debate soon began. We fortunately have this record of the discussion on September 3:

On motion to amend article third, and to strike out these words: 'religion, or prohibiting the free exercise thereof,' and insert 'one religious sect or society in preference to others:'

It passed in the negative.

On motion for reconsideration:

It passed in the affirmative.

On motion that article the third be stricken out:

It passed in the negative.

On motion to adopt the following, in lieu of the third article: 'Congress shall not make any law infringing the rights of conscience, or establishing any religious sect or society:'

It passed in the negative.

On motion to amend the third article, to read thus: 'Congress shall make no law establishing any particular denomination of religion in preference to another, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed:'

It passed in the negative.[96]

This action was significant in showing that Congress was not satisfied with a proposal which merely prevented an advantage to any one denomination over others as far as Church-State separation was concerned. It wished to go further.

On September 9 the Senate "proceeded in the consideration of the resolve of the House of Representatives of the 24th of August, on Articles to be proposed to the legislatures of the several states as amendments to the constitution of the United States"; and more closely defined the establishment of religion clause, and combined this article (old III) with the following one, Article IV, producing the preliminary Senate form of the First Amendment:

On motion to amend article the third, to read as follows: 'Congress shall make no law establishing articles of faith or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and petition to the government for the redress of grievances:'

It passed in the affirmative.[97]

The abstract of the Senate records for September 21 show disagreement on some of the House propositions, and agreement on others; Article III, involving religious freedom, being one over the exact wording of which they disagreed.[98] It was therefore decided that the Senate "do concur with the" proposal of the House "that a conference be desired with the Senate on the subject matter of the amendments disagreed to."[99] Oliver Ellsworth (1745–1807) of Connecticut, Charles Carroll (1737–1832) of Maryland, and William Pater-

son (1745–1806) of New Jersey were appointed to represent the Senate in straightening out the points at issue; with James Madison (1751–1836) of Virginia, Roger Sherman (1721–93) of Connecticut, and John Vining (1758–1802) of Delaware chosen by the House—a strong joint committee, four of whom had been members of the Constitutional Convention.[100] The inclusion of Carroll, a Roman Catholic, is significant.

The choice of the heads of the two delegations is significant. Madison had proved himself a most earnest and intelligent advocate of Church–State separation and religious freedom, as we have repeatedly pointed out; and Ellsworth had written forcefully on the absurdity of giving any church a favored position or of curtailing religious liberty. Wiser choices could not have been made.[101] Unfortunately the minutes of the committee's deliberations have not been preserved, if any were ever kept; but we can be reasonably sure, from experience in other situations, that Madison played the leading part in adjusting the Livermore formula so as to make it even more effective and more completely acceptable to the Senate.

The Senate *Journal* for Thursday, September 24, contains two important entries dealing with the subject. The first is a report from Senator Ellsworth representing the managers of the conference committee to the effect

> That it will be proper for the House of Representatives to agree to the said amendments, proposed by the Senate, with an amendment to their fifth amendment, so that the third article shall read as follows: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the government for a redress of grievances'. . . .[102]

The second is a direct message from the House received later the same day quoting the above action giving the vote on religious freedom which the conferees had accepted and which the House of Representatives had approved, but making their approval of the other Senate amendments dependent upon the acceptance of this new phraseology and a change in Article 8. The exact minute reads as follows:

> A message from the House of Representatives:
>
> Mr. Beckley, their Clerk, brought up the amendments to the "Articles to be proposed to the legislatures of the several states, as amendments to the constitution of the United States;" and informed the Senate, that the House of Representatives had *receded* from their disagreement to the 1st, 3d, 5th, 6th, 7th, 9th, 10th, 11th, 14th, 15th, 17th, 20th, 21st, 22d, 23d, and 24th, amendments, insisted on by the Senate: provided that the "two articles, which, by the amendments of the Senate, are now proposed to be inserted as the third and eighth articles," shall be amended to read as followeth:
>
> Art. 3. Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the government for a redress of grievances.[103]

The following day, September 25, it was

Resolved, That the Senate do concur in the amendments proposed by the House of Representatives to the amendments of the Senate.[104]

These compromises, as adopted by the House on September 24 and by the Senate on September 25, restored the religious clauses nearer to the original Livermore formula. They resulted in the present wording of Article I of the Bill of Rights.

The Congress adjourned September 29 after completing with honor its vitally important work.

No apology may be necessary for giving thus at some length the history of the religious freedom clause, especially as it is so little known that what the *Journal* of the House as given in the *Annals of Congress* calls "Livermore's motion" was its foundation. Furthermore, there is no positive evidence as to who composed the final draft. It has been generally accredited to Madison, whose strong convictions of the vital importance of preventing the government for all time from dealing with any establishment of religion, and of assuring its complete freedom, it well represents; and his latest biographer holds that this view is established. In Brant's *Life of Madison,* the author, though leaving the full discussion of the Bill of Rights to his third volume, makes several statements in the earlier volumes indicating his opinions. He says that the First Amendment "was written by Madison"; that he produced "this positive and all-inclusive injunction: 'Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof' "; and that this amendment "was Madison's further answer in behalf of all the American people, to every attempt, no matter how small or innocent it might seem to be, to establish religion by financial or any other means."[105] This conclusion may be true, but Mr. Brant cites no authoritative evidence for it, and none is likely to appear unless the minutes of the Senate–House Conference Committee which produced the final draft between September 21 and 25, 1789, are brought to light, or other conclusive evidence is forthcoming. As a matter of fact Madison considered the amendment "useful not essential." His great emphasis was on securing a "legal equality" among sects.[106] The question has been much discussed whether the first part of this clause refers merely to preventing legislation on a formal union of a single Church and the national government to the exclusion of other Churches, or whether it implies other forms of separation, which in view of the Fourteenth Amendment are now also

applicable to the states. The trend of court decisions and of public opinion has been toward the latter interpretation.

It is in some ways an incomplete record, because the official minutes of both Senate and House and their editing and indexing are unsatisfactory and incomplete. It must be remembered that visitors were not admitted to the meetings of the Senate until after the close of the first session of the Third Congress. The sessions were held behind closed doors, so the usual independent accounts in the press are wanting. But the records available, and given above more completely than I have seen elsewhere, make it possible to reconstruct a fairly satisfactory account.

Almost equally significant from the standpoint of religious freedom are the last two of the early amendments, IX and X of the Bill of Rights, adopted at the same time. Amendment IX reads: "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people." This must be read in connection with the preamble of the Constitution and with the first two paragraphs of the Declaration of Independence. The "People" who wish to secure "the Blessings of Liberty to ourselves and our Posterity" are individuals who have been created by God with certain inherent or "unalienable rights" which no one and no government can either give or withdraw.

This point is fundamental in our study. It means that religious freedom, which is specifically guaranteed as far as the Federal government is concerned in the Bill of Rights, is also inherent in every citizen because of humanity's divine birthright. This right antedates the creation of the State, which exists for man, not man for the State. "Rights" are not vested in a parliament, or in a king, or in a majority vote of any assembly. They are, as the "Declaration" adopted by the Constituent Assembly in France on October 2, 1789, asserted, "inalienable liberties," but in the United States these were based not only on the secular views of eighteenth-century thinkers, but also on the fundamental Jewish–Christian truth proclaimed by the most liberal of Puritan thinkers, that God is the ultimate source of all human liberty.[107]

Amendment X of the Bill of Rights reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This clause was due partly to wise political theory and partly to the exigencies of the situation which made it necessary to take into account the different conditions and convictions regarding a religious establishment, responsibility for education, etc., in the different states. The same situation had faced the framers of the Articles of Confederation adopted by the Continental Congress in 1778, with the same results.[108]

This reservation embodies what is known as the doctrine of residuary powers, and matters of religion fall clearly within its scope. Many writers on religious freedom in the United States do not give adequate attention to this amendment, practically overlooking the fact that such statutes as may be adopted with reference to the Churches are primarily within the jurisdiction of the several states. These have—subject to the general provisions of the Federal Constitution—"hitherto unfathomed powers to deal with vast subjects of religion, education, and the supply of public utilities."[109]

That such large powers were reserved by the states is natural under the historic circumstances existing at the time, and especially as under the Articles of Confederation the state legislatures were "substantially without restrictions or judicial control."[110]

Another provision of the Bill of Rights, namely, that included in Article V to the effect that no person shall "be deprived of life, liberty, or property, without due process of law," is also important, though it was not specifically extended to include the actions of the several states as distinct from the United States until it was incorporated in the Fourteenth Amendment. This clause was originally interpreted as applying merely "to the machinery or procedure by which persons were tried for crime, by which property rights were adjudicated, by which the powers of eminent domain and taxation were exercised. But it was not deemed to have any bearing upon the actual substance of the law."[111] But, as a result of the important social and industrial changes which followed the Civil War, the interpretation of the clause began to be broadened; and reached its climax, as far as religious liberty is concerned, in the unanimous decision of the Supreme Court in May, 1940, taking religious freedom in the states under the protection of the Fourteenth Amendment.[112] A half century earlier the clause had already been transformed into our most important constitutional restriction on the substance of legislation "applicable not only to natural persons but to corporations," and the theory was evolved that all "arbitrary" regulations deny due process. All this has its applications to certain types of cases in which the Church and social legislation desired by the Church are involved.[113]

One of the framers of the Constitution, James Madison, seems to have taken seriously one word in the Fifth Amendment as possibly affecting religious freedom—the word "property," of which a person cannot be deprived "without due process of law." To him a man's thoughts and convictions are his possessions, which the law must protect if the rights of conscience, which he calls "the most sacred of all property," are to be held inviolate. His views are somewhat original, and as I have never seen them quoted outside of his *Writings* and Blakely's *American State Papers,* and as they come from so high an au-

thority regarding the Constitution, they are here given at considerable length. Writing in 1792 on "Property" he said:

This term in its particular application means "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual."

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage.* . . .

In the latter sense, a man has property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them. . . .

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights. . . .

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government, which impartially secures to every man, whatever is his own.

According to this standard of merit, the praise of affording a just security to property, should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of their opinions, in which they have an equal, and in the estimation of some, a more valuable property.

More sparingly should this praise be allowed to a government, where a man's religious rights are violated by penalties, or fettered by tests, or taxed by a hierarchy. Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and inalienable right. To guard a man's house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man's conscience which is more sacred than his castle, or to withhold from it that debt of protection for which the public faith is pledged by the very nature and original conditions of the social pact. . . .

If there be a government then which prides itself on maintaining the inviolability of property; which provides that none shall be taken *directly* even for public use without indemnification to the owner, and yet *directly* violates the property which individuals have in their opinions, their religion, their persons, and their faculties; nay more, which *indirectly* violates their property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares, the inference will have been anticipated, that such a government is not a pattern for the United States.

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.[114]

It is the author's hope that calling attention to this little-known argument by Madison may prove of historical interest and may serve as a new bulwark to the cause of religious freedom.

It may now be interesting, for the purposes of historical comparison, to note the form of religious-freedom guarantee recommended by the committee on state government of the National Municipal League, in its model state constitution originally drafted in 1921 after much study, and since revised several times. In the latest revision the two clauses on religious freedom are the following:

Sec. 9. [Freedom of religion] The Legislature shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Sec. 10. [Aid to sectarian institutions] No public money or property shall ever be appropriated, applied, donated, or used directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution or association, or system of religion, or for charitable, industrial, educational, or benevolent purposes not under the control of the State.[115]

It will be noticed that the first section has been taken over from the phraseology of the original American Bill of Rights. The second, in slightly different form, has on several occasions been proposed as a Federal constitutional amendment.[116] It has been opposed as unnecessary, as courts have generally interpreted sectarian financial aid by the government, except as covered by certain treaties with Indian tribes, as contrary to existing religious-freedom guarantees. This would almost certainly be true since the Supreme Court's recent decisions that broaden the scope of applicability of the Fourteenth Amendment.[117] Furthermore, a somewhat similar clause is now included in most state constitutions or statutes.[118]

(2) THE SIGNIFICANCE OF THE RELIGIOUS FREEDOM GUARANTEE

It is significant that freedom of religion is grouped in the American Bill of Rights among the liberties protected by the Constitution, and that it is mentioned first in the list. In other words, religious freedom is not only one form of freedom which all citizens have a right to demand, but it is the one which historically has been shown to be in many ways the most important, because it leads to the others. Furthermore, its denial, as recent European events show, leads to various forms of civic oppression. The fundamental "liberties" stand or fall together, and, more particularly, where religious freedom is denied the other liberties soon suffer.

The Kentucky Resolutions, drafted by Jefferson and adopted by the legislature of that state in 1798, in opposition to the reactionary alien and sedition laws framed by the government under Federalist auspices, contained this

statement of the truth that the various freedoms guaranteed by the First Amendment hang or fall together. The Church is rightly interested in all of them.

> The first Amendment guards in the same sentence and under the same words the freedom of religion, of speech and of the press, insomuch that whatever violates either throws down the sanctuary which covers the others, and libels, falsehoods, and defamation equally with heresy and false religion are withheld from the cognizance of the Federal tribunals.[119]

The first sixteen words of the amendment, virtually demanded by several states as a condition of ratifying the Constitution,[120] form the *Magna Charta* of America's religious liberty. They have been held by an influential church historian as bringing to an end in principle the "Protestant age" in American history.[121] They were intended, among various objectives, to prevent the Federal Government from following in the footsteps of some of the Puritan commonwealths by attempting to legislate in the field of religion—a matter now left entirely to the Churches themselves, under such general laws as the state might determine. The remaining parts of the article, although doubtless adopted primarily to assure freedom in matters of political opinion, are also important from the point of view of protecting religious freedom.

For purposes of comparison, a quotation from the relevant sections of the French Bill of Rights as incorporated in the constitution of 1791 is here given. As already shown, both statements had their major inspiration in the same document, the Virginia bill of 1785–86 for establishing religious freedom. The French declaration was made after the drafting of the first American amendments to the Constitution; but because these were not ratified until two years later (1791), this matter of America's priority has not always been recognized.[122]

> IV. La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui: aussi l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits. Ces droits ne peuvent être déterminés que par la loi. . . .
>
> X. Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi.
>
> XI. La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme; tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi.[123]
>
> La liberté à tout homme de parler, d'écrire, d'imprimer et publier ses pensées, sans que ses écrits puissent être soumis à aucune censure ni inspection avant leur publication, et d'exercer le culte religieux auquel il est attaché. . . .

Les biens destinés aux dépenses du culte et à tous services d'utilité publique, appartiennent à la nation, et sont dans tous les temps à sa disposition. . . .[124]

It will be noted that except for the last clause these provisions conform in general to American precedents and practices. Neither the United States nor any of its states has ever expropriated Church endowments for public purposes, except that the glebe lands in Virginia, given by public authority to the Churches in colonial times, were ordered to be handed back to the state for philanthropic purposes in 1802.[125] Other states which followed Virginia's general precedent in the matter of guaranteeing religious freedom did not copy this feature.

Experience has proved that the minister of religion, as well as the ordinary citizen, needs to be guaranteed all the recognized liberties—"freedom of speech," as far as the government is able to effect it, in the pulpit or on the platform; "freedom of the press," in religious journalism; the "right of the people peaceably to assemble" in their churches, meetinghouses, or elsewhere; and the right "to petition the government for a redress of grievances by denominational resolutions or otherwise." These guarantees are fundamental, resting not merely on the expressed intention of the founders of our government but on eternal principles of right and justice which are inherent in the very nature of man, and without which no democratic State could long exist. In a recent discussion of the significance of the Bill of Rights, Walter Lippmann has called attention to the fact that it "rests upon self-evident, inalienable, eternal, and universal principles which no government, and no majority of people, may violate,"[126] and he traces these back to the divine laws of the universe. The Declaration of Independence clearly takes the same ground.[127]

Madison, as we have seen earlier in this section, had proposed an amendment to the Constitution guaranteeing religious freedom, without any limitation of its scope to the Federal government. This is often referred to as "the lost amendment." As a result of its rejection, and the limited character of the Federal constitutional provision, the courts held, prior to the enactment of the Fourteenth Amendment, that the guarantee of religious freedom in the Bill of Rights was actually binding only as against the Federal government.[128]

The Supreme Court in 1810 pointed the way toward a broader interpretation in the case of *Fletcher* v. *Peck*. Chief Justice Marshall, speaking for the Court, said: "The Constitution of the United States contains what may be deemed a Bill of Rights for the people of each State."[129] But that the first ten amendments were designed to be limitations on the general government rather than the states is shown by a decision of the Supreme Court in 1833, in the case of *Barron* v. *Mayor of Baltimore*. Here Chief Justice Marshall, after referring to the adoption of the amendments, stated in an opinion which will

be quoted later that "they contained no expression indicating an intention to apply them to the State governments."[130]

We shall see later[131] how the Fourteenth Amendment, ratified in 1868, has been increasingly interpreted by the courts to extend the guarantees of liberty in the First Amendment to cases under state as well as Federal jurisdiction. In this connection, it is interesting to note that the constitution of the Philippine Republic, adopted February 8, 1935, approved by President Franklin D. Roosevelt, and ratified by a plebiscite of the people of the Islands, contains the religious-freedom guarantee of our Bill of Rights, with the words "Congress shall make no law . . ." changed to "No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. . . ."[132] In other words, it was made clear that the prohibition included all subdivisions of government.

The issue of religious freedom in America did not arise because of any hostility to Christianity, but because the influential nonconforming groups among the rank and file were opposed to certain special favors granted to the Established Church in their states, and because under the influence of Locke, and of others largely influenced by him, a group of intellectuals had been convinced of the importance of religious freedom, both for the cause of religion and for the success of a republican form of government. In no other way could denominational jealousies be prevented, the State saved from undue ecclesiastical influence, and the rights of minorities protected. Judge Joseph Story (1779–1845) has presented this situation in its true light in dealing with the Bill of Rights.

> The real object of the amendment (first) was not to countenance, much less to advance Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment, which should give to an hierarchy the exclusive patronage of the national government. It thus sought to cut off the means of religious persecution (the vice and pest of former ages), and the power of subverting the rights of conscience in matters of religion, which have been trampled upon almost from the days of the Apostles to the present age.[133]

A more recent government statement takes virtually the same position. It is contained in an opinion prepared by the solicitor of the Department of State in connection with an inquiry in relation to the Edinburgh World Missionary Conference of 1910.

> The [First] Amendment of the Constitution and the like provisions in the State constitutions were not dictated by indifference or hostility to the principles of the Christian religion, but aimed to prevent not merely the establishment of any one form

of religion, however widely spread, but to establish upon a firm footing the right before the law of every religious sect.[134]

This view is still clearer when we see that the religious-freedom guarantees of the Bill of Rights were adopted not as a protection *from* religion, but rather as a protection *for* religion. They were inserted in our Constitution largely because its framers felt that they were important to insure the continuance and the strengthening of religion, which could not flourish under American conditions if any State Church were either provided for or tolerated. It is most important to emphasize this fact before we take up specific problems which have arisen in this country in connection with Church-State relations, such as the questions of taxation,[135] marriage and divorce,[136] chaplaincies,[137] education,[138] and the observance of Thanksgiving Day[139]—all of which, and many others, will be dealt with later. In a word, the founders were not secularists, as this term is commonly understood. They would have contemplated with horror any thought of the nation's trying to exist without faith in God and the encouragement of religion; they wanted to make sure that the new government would give no special favors to any one denomination. In this connection the United States is recognized as the first nation deliberately and completely to abjure all legislative control over religious opinions, and over religious practices that were not inimical to the State.[140] A good statement of this position is given in a letter written by Madison after the adoption of the First Amendment, and quoted by Justice Rutledge in his recent dissenting opinion in the New Jersey bus case. It reads:

> The tendency to a usurpation on one side or the other, or to a corrupting coalition or alliance between them, will be best guarded agst. by an entire abstinance of the Govt. from interference in any way whatever, beyond the necessity of preserving public order, & protecting each sect agst. trespasses on its legal rights by others.[141]

There has been much discussion lately as to the meaning of the word "respecting" as applied to religion in the amendment. Some modern liberals have tried to read into it far-fetched conceptions of a rigid separation of the State from all religious interests. This was apparently not intended and certainly not practiced, as the experience with Congressional and military chaplains, Thanksgiving proclamations, and other border-line cases clearly indicates. According to Webster, the word "respecting" merely means in such a connection as this "with regard or relation to; regarding; concerning." But its inclusion is important. If the framers of this clause of the amendment had wished merely to deny the power of Congress actually to establish a national Church or religion, as averred by some constitutional authorities, they would probably have stated that "Congress shall make no law *establishing* a religion," or used some

other simple phrase; but they went further by providing in effect that any law *regarding* such an establishment would be unconstitutional. Such laws, if any were needed, were purely under State jurisdiction. This, when taken in connection with the provision of the Constitution regarding religious tests, the debates of the time, and Jefferson's letter to the Baptists of Danbury, was evidently intended to prevent any laws providing for a close legal association between Church and State, or any confusion of responsibility between them, as far as the Federal government was concerned. It is therefore, in view of the Fourteenth Amendment, not far-fetched for the courts to include financial grants to denominational institutions, as prohibited in many state constitutions such as those of Florida, Georgia, Oregon, South Dakota, Washington, Wisconsin, and Wyoming; or denominational instruction in the public school, as held in the McCollum decision, as coming within the Constitutional ban. Both these practices are forbidden by statute in nearly all the states.

The separation of Church and State in the United States is of fundamental importance, but it has never been a rigid or complete one excluding informal co-operation, where essential separation of responsibility and function are maintained, and all religious bodies are treated with entire impartiality.

Two decisions of the Supreme Court are specially valuable for the light they throw on the background and meaning of the religious-freedom guarantees of the Bill of Rights. The earliest and most important is the Mormon polygamy case, in connection with which the opinion of Chief Justice Waite (1816–88) will be quoted from at length when we discuss that issue.[142] The other case is that of *Davis* v. *Beason,* decided in 1890. Here is the most pertinent portion of the opinion for our purposes:

> The first amendment to the constitution . . . was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. The oppressive measures adopted, and the cruelties and punishments inflicted by the governments of Europe for many ages, to compel parties to conform, in their religious beliefs and modes of worship, to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons, and enforce an outward conformity to a prescribed standard, led to the adoption of the amendment in question.[143]

This is valuable both for its interpretation of the scope of the religious-freedom clause of the Bill of Rights and for its explanation of the reasons which led to its adoption. The attitude of government in America in making a clear distinction between freedom of thought—which is unlimited—and of

action—which is limited by the need of protecting the rights of others—was noted by a distinguished foreigner visiting this country during the period when our states and nation were being formed. Writing in 1782 regarding the farmers of the middle states, Hector St. John de Crevecoeur (1735–1812), who became a naturalized citizen in 1765, remarked that "As Christians, religion curbs them not in their opinions; the laws inspect our actions; our thoughts are left to God."[144] This is but another way of drawing the line between belief and conduct which Jefferson emphasized and which our courts have upheld as far as legal responsibility is concerned. Religious freedom is a necessity in a democracy such as ours, though there is some truth in the Catholic assertion that it tends to weaken authority and to encourage the extremes of denominationalism and of personal idiosyncracies and vagaries of thought.

The importance to the nation as a whole of the Bill of Rights can scarcely be overestimated. Not only did it protect American citizens in all cases coming before the Federal courts, but, what has proved to be of almost equal significance, its more important guarantees of freedom were repeated in all the state constitutions which followed. An English student of our constitutional history, Professor Harold Laski (1893–) has well summed up its real significance:

> That is the sense, for example, in which a real value may be attached to the Bill of Rights in an American constitution. Misinterpreted as it often may be,[145] perverted as it certainly has been, it yet testifies to the vital character of a solid body of social rules. To write into the body of a constitution not immediately accessible to amendment principles which are the result of social experience is to put them beyond the reach of ordinary mischance. Nobody who has at all examined the character of American political life can doubt that this vague well-spring of idealism has not only had, but still potentially possesses, a profound influence. The constitutional provisions against an established church, for instance, are of course derived from a bitter experience of Anglican persecution. They have undoubtedly prevented the growth of the social status connected in England with the official religion, which still leaves a deep mark upon English life.[146] The way in which every state constitutionally insists upon the subordination of the military to the civil power is the safeguard against the aggression involved breeding into the mind of a people the thought that the army is a thing apart, not subject to the rules of justice.[147]

The Amendment was originally considered to be so revolutionary that it was expected to influence the whole country; but technically it applied not to the states but only to the Federal government. This was clearly brought out in a Federal court decision more than fifty years ago.

> It was a belief of Mr. Madison and other founders of our government that they had practically established absolute religious freedom and exemption from persecution for opinions sake in matters of religion; but while they made immense strides in that

direction, and subsequent progress in freedom of thought has advanced the liberalism of the conception these founders had, as a matter of fact they left to the states the most absolute power on the subject, and any of them might, if they chose, establish a creed and a church and maintain them.[148]

The Bill of Rights has been increasingly stressed of recent years. A significant manifestation of this is the organization of several national associations which lay special emphasis on the importance of maintaining its guarantees.

The true significance of these Federal religious-freedom guarantees may be seen if it is recalled that when they were adopted Rhode Island and Virginia alone enjoyed perfect freedom; that Pennsylvania required belief in God for all important officeholders; that several states continued certain political discriminations against Jews, Catholics, and atheists; and that five—Massachusetts, Connecticut, New Hampshire, Maryland, and South Carolina—still had churches established by law.[149]

But it must also be remembered that at the time the First Amendment was being discussed and adopted not only was religious freedom being actually brought about in several widely separated states, but the separation of Church and State, functioning in accordance with Locke's general ideas, was being effected in the former colonial possessions. These facts give added weight to the interpretation of the amendment as involving not only religious freedom, but also the doing away with Church–State connections.

The Bill of Rights gives religious liberty the character of a political right, being intended, according to the Supreme Court,

> to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose, as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to equal rights of others, and to prohibit legislation for the support of any religious tenets or the modes of worship of any sect.[150]

This was prior to the adoption of the Fourteenth Amendment and its judicial interpretation to apply also to cases of freedom of speech and religious freedom in the states.[151]

The most important case decided by the Supreme Court regarding the applicability of the Bill of Rights prior to this amendment is the case of *Permoli* v. *First Municipality of New Orleans.* This was a case involving a local ordinance adopted in 1827 making it unlawful to "convey and expose"[152] any dead person in the parochial church of St. Louis, the ordinance being adopted for reasons affecting the public health. A person charged with breaking this ordinance brought suit to show that it was contrary to the Constitution and laws

of the United States, which prevent the enactment of laws prohibiting the free exercise of any religion. The case was ably argued on both sides.

The United States Supreme Court, through Justice John Catron (*c.* 1786–1865), delivered an opinion denying that the ordinance was contrary to the Constitution, taking the ground that the First Amendment of the Bill of Rights did not apply to the states. The opinion says:

> The ordinances complained of, must violate the Constitution or laws of the United States, or some authority exercised under them; if they do not, we have no power by the 25th section of the Judiciary Act to interfere. The Constitution makes no provision for protecting the citizens of the respective states in their religious liberties; this is left to the state constitutions and laws: nor is there any inhibition imposed by the Constitution of the United States in this respect on the states. We must therefore look beyond the Constitution for the laws that are supposed to be violated, and on which our jurisdiction can be founded: these are the following acts of Congress. That of February 20, 1811, authorized the people of the territory of Orleans to form a constitution and state government; by sect. 3, certain restrictions were imposed in the form of instructions to the convention that might frame the constitution; such as that it should be republican; consistent with the Constitution of the United States, that it should contain the fundamental principles of civil and religious liberty; that it should secure the right of trial by jury in criminal cases, and the writ of *habeas corpus*. . . . In our judgment, the question presented by the record is exclusively of state cognisance, and equally so in the old states and the new ones; and that the writ of error must be dismissed.[153]

For our present purposes the point to be emphasized is that prior to the ratification of the Fourteenth Amendment in 1868 there was nothing in the Federal Constitution which made it possible for the national government legally to protect religious freedom in the states. The extension of the guarantees of the First Amendment to state cases will be discussed later.[154]

The theory of religious freedom embodied in the United States Constitution and its Bill of Rights has had a broad influence not only on our law but on the thinking and attitudes of our people. Probably never before in the history of Western civilization has there been so much respect over a large area for the individual's religious convictions. It provides a good example of wh[at] has recently been called "ideodynamics"—the descriptive study of ideologies and of the result of the forces which they exert.[155] The world has had a painful example of the same factor with terrible results when perverted, in the Fascist, Marxian, and Nazi ideologies developed in the last decade in lands where the totalitarian State is supreme and the individual's convictions when they run counter to its views are disregarded. In the United States a man is entirely free to hold any religious or irreligious opinion he may like, including that of atheism,[156] as long as he observes the law of the land.

It is to be noted that neither the original Constitution nor the Bill of Rights specifically refers to Church and State separation, but this does not in any way invalidate the theory supported by the Supreme Court that such separation is involved, in keeping with the plan which had just been carried out in Virginia, where Madison, Jefferson, and others of the Founding Fathers had been so influential [V, 3, (4), (5)]. There are many laws which Congress has passed and actions taken by the president which the Supreme Court has not declared unconstitutional, although they were not specifically covered by the Constitution or by any of its amendments. I refer to such matters as the actions taken by Hamilton in securing the United States Bank Charter in 1791, and by Jefferson in purchasing Louisiana in 1803, and the extension of the commerce clause to include radio. The fact is that the government has used some freedom in stretching the Constitution to meet new situations when new interpretations seemed advisable and in general keeping with Constitutional provisions. This was also true of Chief Justice Marshall in interpreting the powers of the Supreme Court to pass on the constitutionality of Federal laws.

Dr. Benjamin F. Wright, Professor of Government at Harvard University, and author of *The Growth of American Constitutional Law,* is authority for the statement (*New York Times, Literary Supplement,* July 10, 1949) that most of the commentators in the American law reviews have supported the Supreme Court in its recent interpretations that the Federal Constitution implies the separation of Church and State, though such established customs as army chaplaincies and Thanksgiving Day proclamations have been generally accepted as not inconsistent with the mutually friendly separation existing. The almost unbroken record of our government in supporting it, and various court interpretations, both Federal and state, as well as provision for this separation from the earliest days in state constitutions and statutes, all point in the same direction. What is said also applies in large measure to the interpretation of the word "Liberty" in the Fourteenth Amendment so as to bring under its protection the guarantees of the First Amendment, a procedure which has undoubtedly helped in protecting minority rights.

(3) THE ANNIVERSARIES OF THE CONSTITUTION AND THE BILL OF RIGHTS

Each of the important anniversaries of the Constitution and its Bill of Rights has been duly observed in this country, but the most significant were those that took place after the Civil War and during World War II. On the first occasion gratitude for the preservation of the Union and for the reintegration of the shattered fabric of the nation which was under way made the emphasis at the celebration primarily on the Constitution. It led, among other results, to the publication by the American Historical Association of the important

book by Dr. Philip Schaff (1819–93) on *Church and State in the United States* (1888), designed to commemorate the centenary of the acceptance of the Constitution by the Constitutional Convention of 1787.

Even more significant, owing to and in contrast with the rise of aggressive Nazi and Fascist totalitarian despotism in Germany and Italy, were the celebrations of the one hundred and fiftieth anniversary. Congress by unanimous vote created in 1935 the United States Constitution Sesquicentennial Commission, which did an excellent work in creating among public school pupils and citizens generally a more exact knowledge of the Constitution and an intelligent interest in its significance. The commission's basic publication, entitled *The Constitution of the United States of America with Amendments and the Declaration of Independence*, contained historic notes and explanatory documents.

This sesquicentennial commission included the Bill of Rights in its scope, and when the anniversary of the latter had been reached the United States was at war largely to preserve in the world the freedoms for which it stood. It therefore seemed proper that the Office of Civilian Defense should devote itself to organizing the celebration throughout the nation of Bill of Rights Day, December 15, 1941. The date chosen was that of the ratification of the bill by the state of Virginia, by which the assent of the necessary three-fourths of the states was secured. The government published a brochure entitled *Bill of Rights Day, The Sesquicentennial of the Bill of Rights*, giving the document; an historical essay on "The Making of a Charter"; a chapter entitled "What Men Have Said"—quotations from distinguished publicists on liberty in general and the Bill of Rights in particular; another on "The Bill of Rights Today"; and suggestions giving proposed community programs and a bibliography.

There was also established in 1941 by a representative group of citizens a Bill of Rights Sesqui-Centennial Committee, of which the president was honorary chairman and Herbert Bayard Swope chairman. The committee's proclamation, which was widely used, read in part:

> Dec. 15, 1941, marks the sesquicentennial of the adoption by the people and Congress of the United States of the first ten amendments to the Constitution—known and revered as the Bill of Rights. For a century and a half, it has stood as the charter of the liberties of the American people. It is not only a part of the Constitution; it is the soul of that immortal document.
>
> The Bill of Rights embodies the love of freedom which characterized the founding fathers of our country. . . .
>
> On this one hundred and fiftieth anniversary of the adoption of the Bill of Rights it is fitting that Americans rededicate themselves to maintain and enhance it. This is

no empty gesture. The times are fraught with peril to political, religious and human liberty. Now, as when the Bill of Rights was enacted by Congress, there are those who would abrogate freedom, create tyranny through bigotry and destroy the basic American concept that all men are created equal. . . .[157]

The committee issued an admirable poster in colors, designed by James Montgomery Flagg, representing a Continental officer holding a roll with the Bill of Rights in his hand, and above the legend "Defend our Bill of Rights 1797 1941." This was reproduced by the Council against Intolerance in America.

The significance of this anniversary celebration and the importance of the freedoms guaranteed by the Bill of Rights are effectively outlined in the president's proclamation.

Whereas a joint resolution of the Congress, approved Aug. 21, 1941, authorizes and requests the President of the United States "to issue a proclamation designating Dec. 15, 1941, as Bill of Rights Day, calling upon officials of the government to display the flag of the United States on all government buildings on that day, and inviting the people of the United States to observe the day with appropriate ceremonies and prayer":

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, do hereby designate Dec. 15, 1941, as Bill of Rights Day. And I call upon the officials of the government, and upon the people of the United States, to observe the day by displaying the flag of the United States on public buildings and by meeting together for such prayers and such ceremonies as may seem to them appropriate.

The first ten amendments, the great American charter of personal liberty and human dignity, became a part of the Constitution of the United States on the 15th day of December, 1791.

It is fitting that the anniversary of its adoption should be remembered by the nation which, for one hundred and fifty years, has enjoyed the immeasurable privileges which that charter guaranteed: the privileges of freedom of religion, freedom of speech, freedom of the press, freedom of assembly and the free right to petition the government for redress of grievances.

It is especially fitting that this anniversary should be remembered and observed by those institutions of a democratic people which owe their very existence to the guarantees of the Bill of Rights: the free schools, the free churches, the labor unions, the religious and educational and civic organizations of all kinds which, without the guarantee of the Bill of Rights, could never have existed; which sicken and disappear whenever, in any country, these rights are curtailed or withdrawn.

The 15th day of December, 1941, is therefore set apart as a day of remembrance of the democratic and peaceful action by which these rights were gained, a day of reassessment of their present meaning and their living worth.

Those who have long enjoyed such privileges as we enjoy forget, in time, that men have died to win them. They come, in time, to take these rights for granted and to assume their protection is assured. We, however, who have seen these privileges lost

in other continents and other countries can now appreciate their meaning to those people who enjoyed them once and now no longer can. We understand in some measure what their loss can mean. And by that realization we have come to a clearer conception of their worth to us, and to a stronger and more unalterable determination that here in our land they shall not be lost or weakened or curtailed.

It is to give public expression and outward form to that understanding and that determination that we are about to commemorate the adoption of the Bill of Rights and rededicate its principles and its practice.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.[158]

Somewhat similar proclamations were issued by the governors of most of the states and territories, while mayors of over one hundred of our leading cities asked citizens to observe the day in an appropriate way.

An example of these supplementary celebrations was that held in the state of New York beginning February 16, 1941. The proclamation was brief but breathed the spirit of the historical setting in which it was issued. It had perhaps particular significance in being signed by a governor who was himself an honored adherent of the Jewish religion.

Bill of Rights Week, now being celebrated in New York State, should be held as an important part of our national defense program in churches and schools and town halls throughout the State wherever young and old may gather—there is today a new resurgence of devotion to those fundamental principles of civil and religious freedom which have made us the strongest and happiest people in the world.

Perhaps the wording of those ten amendments to the Constitution which constitute the Bill of Rights fall somewhat short of poetry; yet no poet has ever managed to encompass the basic philosophy, the very warp and woof of freedom, in so brief a document. In 462 words, taking less than two minutes to read, the Bill of Rights has been the cement which has bound together our 130,000,000 people in a unity that no dictator could ever achieve after months, or even years, of thundering tirades.

The determination of the American people to defend the Bill of Rights is, in fact, the driving force, the motivation, behind our whole national defense program.[159]

It is believed that the celebrations mentioned and hundreds of others held throughout the United States deeply impressed our people, particularly by showing them more clearly what was at issue in the struggle between the democratic, free nations of the world and those under despotic totalitarian rule.

The custom of observing annually the Bill of Rights Day is increasing. There has been a marked movement in this direction during and since the close of World War II, due doubtless to the fact that our people realize that it was largely because there was no bill of rights in Germany and no recognition of its ideals that Nazism flourished. As an evidence of this the Sons of the Ameri-

can Revolution took the lead in securing the adoption of a joint resolution of Congress observing December 15, 1946, as Bill of Rights Day by presidential proclamation.

Section 3. THE COURTS AND JUDICIAL REVIEW

Three acts in the early history of our government which do not in any way refer directly to religion or to religious freedom have nonetheless been of vital importance in the history of Church-State relations in this country. These are the reference to the Federal courts in the Constitution; the Judiciary Act of 1789; and the decision of the Supreme Court as written by Chief Justice Marshall in the case of *Marbury* v. *Madison* in 1803. These must be considered in turn.

(1) THE CONSTITUTIONAL FOUNDATIONS

Article III of the Constitution of the United States provided for the establishment of the Supreme Court. The clauses follow:

The Judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good behaviour. . . .

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. . . .

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

These sections, together with the second paragraph of Article VI, made it inevitable that the Supreme Court should be the final arbiter of the consti-

tutionality of the laws of the United States and of the constitutions and laws of the several states. The second paragraph of Article VI reads:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The full responsibilities of the Federal judiciary in general, and of the Supreme Court in particular, under these clauses, which inevitably tended to protect the religious freedom in the First Amendment and the "Liberty" provisions of the Fifth and Fourteenth Amendments were, however, clarified by subsequent events.

It will be noticed that there is no specific reference in these sections to what has come to be called "judicial review" by the Supreme Court, but it is latent and implied in the wording. Earnest debates in the Convention centered in the proposition to make the president and the justices of the Supreme Court members of a Council of Revision to negative acts of the Congress. No specific resolution giving the judiciary alone power to declare acts of Congress unconstitutional was offered, but as Senator Beveridge states in his *Life of John Marshall,* "It seems probable, however, that it was generally understood by the leading men of the Convention that the Judiciary was to exercise the power of invalidating unconstitutional acts of Congress."[160] For instance, Elbridge Gerry of Massachusetts stated that the judicial function of expounding statutes "involved a power of deciding on their constitutionality," whereas Madison, who had at first opposed this theory, later stated that "A law violating a constitution established by the people themselves, would be considered by the Judges null & void."[161] Hamilton, in No. 78 of *The Federalist,* had made the theory well known. He had written with unanswerable logic that

> The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, . . . the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agent.[162]

But how were the clauses of the Constitution to be interpreted? Were the strict constructionists or the loose constructionists to prevail? Was the Constitution to be considered primarily as a legal document to be observed always to the letter with few amendments, or as a practical basis of government which might be freely modified more or less frequently? Was the court to void laws

only in flagrant cases of unconstitutional government, or more freely? Such were some of the great questions that must be decided and decided right. And when one realizes the unique position in our republic of the Supreme Court as the guardian of a written Constitution, the uniformly high character of the judges chosen for life and removed from the atmosphere of partisan politics, and the generally broad and wise manner in which they have met the duties of their office, it is not to be wondered that it has become one of the nation's major symbols of integrity and stability. Its standing and influence have on the whole increased with the years, so that when President Franklin D. Roosevelt attempted a few years ago to increase its membership with a social-political motive in mind, the plan was decisively rejected by Congress and public opinion. Its general position is so strong that a recent writer has said that it "has replaced the Church as the American symbol of social stability."[163] It is recognized by thoughtful people to be a bulwark of our system of representative government. Its sessions, unlike those of Congress, are not opened with formal prayer, but the court crier still announces the entrance of the justices with the old-time formula, "Oyez, oyez, oyez! . . . God save the United States and this Honorable Court."

When one reads the clauses of the Constitution with reference to the judiciary, and when one considers the discussions of the time and the necessity for some final authority to interpret the document, especially when its wording was open to different constructions, it seems clear that the time would come when the doctrine of judicial review by the Federal courts would be formally and definitely established. It follows that the Supreme Court would ultimately be called upon to pass on Church–State matters where the "liberty" and "freedom" clauses were involved. This required, however, the definite legal organization of the judiciary under the Constitution, and—in the absence of constitutional amendments clearly defining its scope—the interpretation of its powers by the Supreme Court itself. We come then, inevitably, to the organization of the judiciary.

(2) THE JUDICIARY ACT OF 1789 AND THE JUDICIAL CODE

This Act, implementing the judiciary clause of the Constitution, had certain features that were later discarded, but for our purposes the fundamental portion was Section 25, which, as originally adopted, read as follows:

> And be it further enacted, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the

ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute.[164]

This provision of "judicial review" has been written with some changes of wording and arrangement and some clarifications in the revised Judicial Code passed by the House in 1947 and by the Senate in 1948. The new Code was in effect after September 1, 1948. The most important clauses which make it possible for the Supreme Court to pass on the constitutionality of state legislative and court decisions and on Congressional and other Federal actions involving, among other matters, religious freedom, follow:

Sec. 1252. Direct appeals from decisions invalidating Acts of Congress.

Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands and any court of record of Alaska, Hawaii and Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

A party who has received notice of appeal under this section shall take any subsequent appeal or cross appeal to the Supreme Court. All appeals or cross appeals taken to other courts prior to such notice shall be treated as taken directly to the Supreme Court.[165]

Sec. 1254. Courts of appeals; certiorari; appeal; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.[166]

Sec. 1257. State courts; appeal; certiorari.

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States.[167]

Sec. 1343. Civil rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Title 8;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 47 of Title 8 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.[168]

Sec. 1443. Civil rights cases.

Any of the following civil actions or criminal prosecutions commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State

a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.[169]

These clauses give the Federal judiciary, and finally the Supreme Court, the power to protect the citizen in the rights granted him by the Constitution, including the right of religious freedom, against any act depriving him of any such right by any state or even by Congress itself. They are consequently, especially since the Court's specific decision as to the applicability of the Fourteenth Amendment[170] to religious freedom cases,[171] of the greatest importance from the standpoint of these volumes.

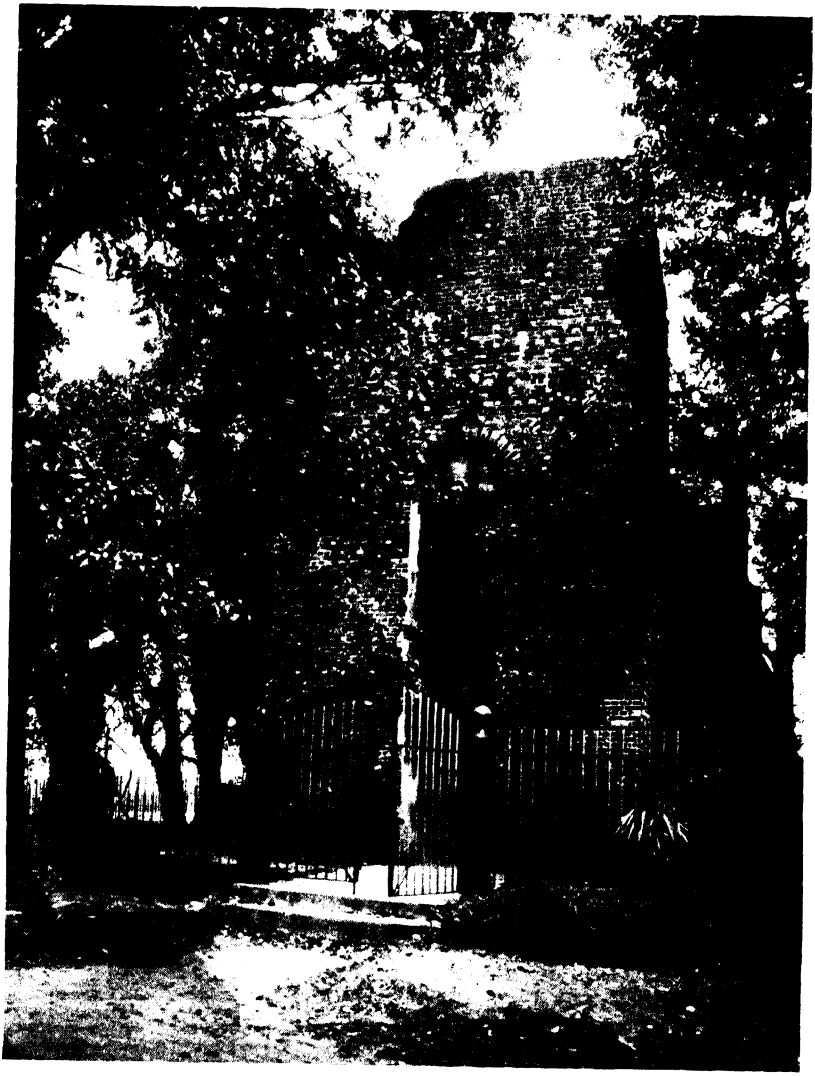
Professors Morison and Commager have summed up the vital significance of the Judiciary Act to the working of our Federal republic. They say:

The great problem of getting cases that involved jurisdictional disputes out of the state courts and into federal courts, in order that the Constitution, laws, and treaties of the United States might indeed be "the supreme law of the land," was solved in the twenty-fifth section of this Act. A final judgment in the highest court of a state, in any case involving a conflict between federal and state powers, may be re-examined in the Supreme Court of the United States upon a writ of error. This section is quite as essential to the peaceful working of the federal system as the Constitution itself. Without it, every state judiciary could put its own construction on the Constitution, laws, and treaties of the Union. A case involving constitutional law may originate either in the state or the lower federal courts; but its final determination belongs to the Supreme Court of the United States.[172]

It will be noticed that a fundamental feature of the original Judiciary Act, in whose drafting many of the framers of the Federal Constitution took part, remains intact in the present code. It provides for final review by the Supreme Court of all decisions of state courts disallowing claims founded upon the Constitution, acts of Congress, or treaties of the United States.[173] This has made it possible for the Supreme Court, in its judicial discretion, to protect religious freedom by declaring void under the Constitution any act of Congress or of a state legislature whose validity has been questioned in a case before it.

(3) THE CASE OF MARBURY V. MADISON (1803)

Acting under the Judiciary Act, the Supreme Court in 1794 passed upon the constitutionality of the so-called "Carriage Tax" in a test case which was devised with the approval of Congress.[174] This case involved the question as to whether the tax was a direct tax and therefore subject to the rule of apportionment. The way was therefore clear for the Supreme Court to go ahead and



Courtesy Horatio Cook, Richmond

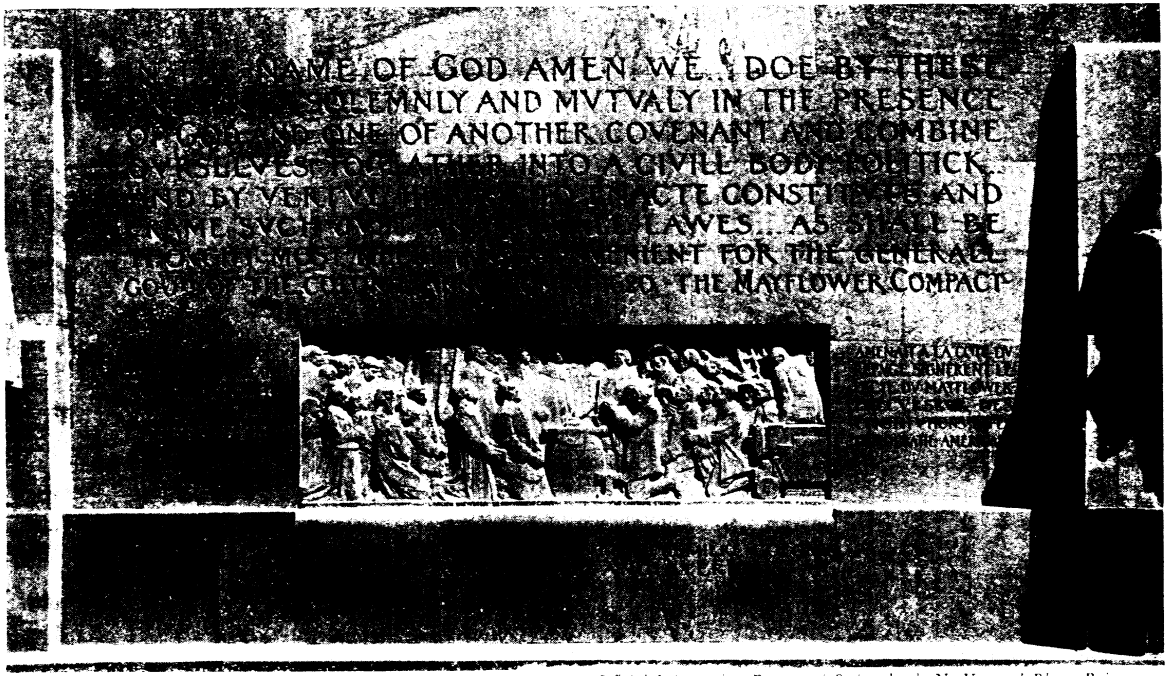
1. OLD JAMESTOWN CHURCH TOWER, c. 1639

The brick tower of the church has survived over three centuries; the nave is a later addition (1907). It was in the still earlier church- a frame one erected about 1617, of which some of the foundations apparently exist on the site of the present church—that in 1619 the first representative body of American legislators, the Virginia "Grand Assembly," met July 30, 1619. At this session, which was opened with prayer by the local minister, laws were passed duly establishing the Church of England in the colony. See III, 2, (2).

Courtesy Official Information Bureau of Switzerland, N. Y., and Photo Boissonnas

2. MONUMENT OF THE REFORMATION IN GENEVA

An impressive monument on the Promenade des Bastions completed in 1918. Some idea of its size may be derived from the fact that the central figures of Calvin and Farel are sixteen feet high. The photograph shows the central portion of the monument. Williams' figure—hidden by tree – is first on the right as one faces the central group. He represents the influence of Calvinism in North America. See III, 1, (9); 2, (1); 3, (3).



Courtesy Official Information Bureau of Switzerland, N. Y., and Photo Boissonnas

3. BAS RELIEF OF MAYFLOWER COMPACT, 1620

Bas relief next to the figure of Roger Williams on the impressive international monument of the Reformation in Geneva. It commemorates the foundation of the principle of democratic government in America by the Puritan Settlers (Pilgrims) of Plymouth. See III, 2, (1), (a).

Courtesy Society for the Preservation of New England Antiquities

4. OLD NEW ENGLAND MEETING HOUSE

This meeting house at Rocky Hill, Amesbury, Mass., built in 1785, was used, as frequently in early New England, for both Congregational Church and town government purposes. Although the state was then under a constitution (1780) providing for liberty of conscience, the legislature was directed "to authorize and require the several towns . . . to make suitable provision at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion and morality in all cases where such provision shall not be made voluntarily." This law remained until 1833. The stern simplicity and sincerity of the building are impressive. It is now owned by the Society for the Preservation of New England Antiquities. See III, 2, (1), (b); V, 7, (1), (2); XI, 8.

Courtesy Ewing Galloway, N. Y.

5. SAINT-GAUDENS' STATUE OF THE PURITAN

This statue in Springfield, Mass., of Deacon Samuel Chapin, 1595-1675, shows the characteristics of the New England settlers—energy, fortitude, righteousness, sternness, conviction. The Bible under his arm stands for a deep faith in which Old Testament elements were as marked as those of the New. Chapin was a founding deacon of the Springfield church (Congregational), of which he once acted as minister; he also served the town as magistrate, selectman, and in other capacities—thus combining Church and State functions. See III, 2, (1).

Courtesy J. P. Jones, Boston

6. STATUE OF ANNE HUTCHINSON, 1591-1643

A bronze statue of Mrs. Hutchinson—the gift to the State of the Anne Hutchinson Memorial Association and the State Federation of Women's Clubs—was dedicated June 28, 1922, in front of the West Wing of the Massachusetts State Capitol in Boston. The sculptor was Cyrus E. Dallin. See III, 3, (1), (a).

Courtesy Library of Congress

7. INTERIOR OF JEWISH SYNAGOGUE IN NEWPORT, R. I., 1763

Designed by an eminent architect, Peter Harrison, this synagogue was built in 1763 and is still in use. President Stiles of Yale attended the dedication, and left an interesting account of the dignified ritual. President Washington exchanged congratulatory letters with its officers shortly after his inauguration. The synagogue is now protected as a national shrine. The photograph was taken recently. See XIII, 2.

THE

BLOVDY TENENT,

of PERSECUTION, for cauſe of CONSSIENCE, diſcuſſed, in

A Conference *betweene*

TRVTH and PEACE.

VVHO,

In all tender Affection, preſent to the High Court of *Parliament*, (as the *Reſult* of their *Diſcourſe*) theſe, (amongſt other *Paſſages*) of *higheſt conſideration*.

Printed in the Year. 1644.

Courtesy Yale University Library

8. FIRST BOOK ON RELIGIOUS FREEDOM WRITTEN IN AMERICA, 1644

The Bloudy Tenent, of Persecution, for Cause of Conscience, . . . was printed in 1644. It is one of Williams' greatest contributions to the cause of religious tolerance. See III, 3 (3).

more heavenly and ſpirituall manner, &c.

CHAP. CXXXII.

Peace. O that thy *Light* and *Brightnes* (deare Truth) might ſhine to the darke World in this particular: let it not therefore be grievous, if I requeſt a little further illuſtration of it.

Truth. In his ſeaſon *God* will glorifie himſelfe in all his *Truths*: but to gratifie thy deſire, thus: A *Pagan* or *Antichriſtian Pilot* may be as skilfull to carry the Ship to its deſired Port, as any *Chriſtian Mariner* or *Pilot* in the World, and may performe that worke with as much ſafety and ſpeed: yet have they not command over the *ſoules* and *conſciences* of their *paſſengers* or *mariners* under them, although they may juſtly ſee to the labour of the one, and the *civill* behaviour of all in the *ſhip*: A *Chriſtian Pilot* he performes the ſame worke, (as likewiſe doth the Metaphoricall *Pilot* in the ſhip of the *Commonweale*) from a principle of *knowledge* and *experience*: but more then this, he acts from a roote of the feare of *God* and love to *man-ind*, in his whole courſe. Secondly, his *aime* is more to glorifie *God* then to gaine his pay, or make his voyage. Thirdly, he walkes heavenly with Men, and *God*, in a conſtant obſervation of *Gods* hand in *ſtormes, calmes*, &c. So that the thread of *Navigation* being equally ſpun by a *believing* or *unbelieving Pilot*, yet is it drawn over with the *gold* of *Godlines* and *Chriſtianitie* by a *Chriſtian Pilot*, while he is holy in all manner of *Chriſtianitie*, 1 Pet. 1 15. But laſtly, the *Chriſtian Pilots* power over the Soules and *conſciences* of his *Sailers* and *Paſſengers* is not greater then that of the *Antichriſtian*, otherwiſe then he can ſubdue the ſoules of any by the two-edged ſword of the *Spirit*, the Word of *God*, and by his holy demeanour in his place, &c.

The Magiſtrate like a Pilot in the Ship of the Common-weale.

Chriſtianitie fleeres a Chriſtian Pilots courſe.

The Chriſtian Pilot hath no more power over the ſoules of his Mariners or paſſengers, then the unchriſtian or Pagan Pilot.

Peace. I ſhall preſent you with no other conſideratioon in this firſt part of the Picture, but this only:

Although the tearme *Heathen* is moſt commonly appropriated to the wilde naked *Americans*, &c. yet theſe worthy men juſtly apply it even to the civilized *Romanes* &c. and conſequently muſt it be applied to the moſt *civilized Antichriſtians*, who are not the *Church* and people of *God* in *Chriſt*.

The tearmes Heathen and Chriſtian Magiſtrate.

Truth. The Word גוים in the *Hebrew*, and ἐθνη in the *Greeke*, ſignifie no more then the *Gentiles* or *Nations* of the Earth, which were

Courtesy Yale University Library

9. ROGER WILLIAMS' INTERDENOMINATIONAL SHIP

Perhaps the finest presentation of religious toleration in the America of the seventeenth century was Williams' account in his *The Bloudy Tenent, of Persecution* of the ship at sea with a Christian captain but crew and passengers of various religions. The pilot has control of *"civill behaviour,"* but not of *"consciences."*

This is taken from the first edition, 1644. See III, 3, (3).

Courtesy Maryland Historical Society

10. CECIL CALVERT PRESENTING TO LYCURGUS HIS LIBERAL "ACT CONCERNING RELIGION," 1649

Religious freedom for all Trinitarian Christians in Maryland was provided by this act. Behind Calvert stands Penn "1680" to show Calvert's priority in granting freedom. Note various religious groups above. The correct date of engraving is 1793. See V, 2.

Courtesy Maryland Tercentenary Committee

II. MARYLAND MONUMENT TO FREEDOM OF CONSCIENCE

Erected in St. Mary's City by the Counties of Maryland to commemorate the passing in 1649 by the General Assembly of the "Act Concerning Religion" to carry out ideals Calvert, Second Baron of Baltimore, had inherited from his father. It is the work of Hans Schuler (1874–) and depicts the liberation of the spirit long bound by intolerance. Symbolically, the figure forces aside the rocks that have held it earthbound and emerges into the light of religious tolerance. The picture shows the Governor, an Episcopalian, with a Jewish rabbi, a Roman Catholic priest, a Protestant minister, and other representative citizens on the anniversary of the Act. See III, 3, (2); V, 2.

Courtesy Historical Society of Pennsylvania and Frick Art Reference Library

12. WILLIAM PENN, 1644-1718

A portrait showing Penn as a young man. It was painted in 1666 when he rendered some military service. Hence the armor on this apostle of peace. He and Roger Williams were the most forward-looking advocates of religious freedom in Colonial America. This is the only authentic portrait though there is a statue from a contemporary model at the Pennsylvania State Hospital, Philadelphia. See III, 3, (5).

A

LETTER

Concerning

TOLERATION.

By *John Locke*, Gent.

The THIRD EDITION.

BOSTON, Printed and Sold by ROGERS and FOWLE in Queen-ſtreet, next to the Priſon.

1743.

Courtesy Yale University Library

13. TITLE PAGE OF JOHN LOCKE'S "LETTER CONCERNING TOLERATION," BOSTON, 1743

Locke's works on civil government, beginning with his *Two Treatises of Government* (1690) were highly influential in this country. So were his other writings in developing Constitutional views of religious toleration by the states. He favored a broad Established Church, with freedom for all groups, except Roman Catholics and Atheists! See III, 1, (16).

AND it came to paſs after theſe things, that Abraham ſat in the door of his tent, about the going down of the ſun:

2 And behold a man, bowed with age, came from the way of the wilderneſs, leaning on a ſtaff.

3 And Abraham aroſe and met him, and ſaid unto him, Turn in, I pray thee, and waſh thy feet, and tarry all night, and thou ſhalt ariſe early on the morrow, and go on thy way.

4 But the man ſaid, Nay, for I will abide under this tree.

5 And Abraham preſſed him greatly, ſo he turned, and they went into the tent, and Abraham baked unleavened bread, and they did eat.

6 And when Abraham ſaw that the man bleſſed not God, he ſaid unto him, Wherefore doſt thou not worſhip the moſt high God, creator of heaven and earth?

7 And the man anſwered and ſaid, I do not worſhip the God thou ſpeakeſt of, neither do I call upon his name; for I have made to myſelf a God, which abideth alway in mine houſe, and provideth me with all things.

8 And Abraham's zeal was kindled againſt the man, and he aroſe and drove him forth with blows into the wilderneſs.

9 And at midnight God called unto Abraham, ſaying, Abraham, where is the ſtranger?

10 And Abraham anſwered and ſaid, Lord he would not worſhip thee, neither would he call upon thy name, therefore have I driven him out from before my face into the wilderneſs

11 And God ſaid, Have I borne with him theſe hundred ninety and eight years, and nouriſhed him, and cloathed him, notwithſtanding his rebellion againſt me; and couldſt not thou, that art thy ſelf a ſinner, beare with him one night!

12 And Abraham ſaid, Let not the anger of my Lord wax hot againſt his ſervant; lo, I have ſinned, forgive me I pray thee.

13 And Abraham aroſe, and went forth into the wilderneſs, and fought diligently for the man, and found him, and returned with him to the tent, and when he had entreated him kindly, he ſent him away on the morrow with gifts.

14 And God ſpake again unto Abraham, ſaying For this thy ſin ſhall thy ſeed be afflicted four hundred years in a ſtrange land:

15 But for thy repentance will I deliver them, and they ſhall come forth with power, and with gladneſs of heart, and with much ſubſtance.

Courtesy Yale University Library

14. FRANKLIN'S PARABLE AGAINST PERSECUTION, c. 1760

Reproduced from a photograph of the Parable in the Benjamin Franklin Collection of the Yale Library, presented by William Smith Mason; taken from the unique contemporary fifteen-verse edition in the Library of Congress. The history of this extra chapter of the Book of Genesis is a bibliographical problem. Probably Franklin got the idea from Jeremy Taylor or some other writer, but the last four verses were his own composition. He had a sheet containing it in his Bible and got pleasure in reading it to unsuspecting friends. In its original eleven-verse form it was apparently printed for Franklin in England after 1757. This copy was published a few years later. It breathes the spirit of religious freedom and humility. See IV, 8, (1).

Courtesy Yale University Library

15. REV. SAMUEL DAVIES, D.D., 1723-61

Reproduced from the *Presbyterian Magazine*, Volume III, 1853. There is also a portrait at Princeton. Davies was an honored Presbyterian divine who did much to aid Jefferson, Madison, and other statesmen in bringing about religious freedom in Virginia. See III, 3, (6).

Courtesy New York Public Library

16. OPPOSITION TO QUEBEC ACT, 1774

An engraving by Paul Revere which appeared in the *Royal American Magazine* in October, 1774, and aroused New England opposition to Roman Catholics. It shows four bishops dancing about the Quebec Bill and four other bishops seated in the background. To the left are three men and a Highland piper, and above the piper the Devil. The engraving is listed by Stauffer as No. 2688, "Mitered Minuet." See IV, 2.

Courtesy New York Public Library

17. "AN ATTEMPT TO LAND A BISHOP IN AMERICA," 1769

From the *Political Register* for September, 1769. A ship containing an unwanted bishop is being pushed off by some angry colonists. Some shout, and one waves a flag on which is written "Liberty & Freedom of Conscience." One man flourishes a volume of "Sydney on Government," and another waves "Locke" on high; Calvin's Works have been tossed after the prelate. A bystander shouts: "No Lords Spiritual or Temporal in New England." See III, 4, (4).

To the PUBLIC.

FEW are ignorant, that the Aſſemblymen of this Colony, were anciently induced to conſent to tax the four Counties of *New-York*, *Weſt-Cheſter*, *Queen's* and *Richmond*, for the Support of the Clergy.

Before Col. *Lewis Morris*, was diſmiſſed at the laſt Spring Seſſion, upon the Pretence of Non-Reſidence in the Borough of *Weſt-Cheſter*, tho' Part of his Farm is within its Limits, and as ſuch annually taxed there; he brought in a Bill to exempt the Non-Epiſcopalians from contributing to this Tax, which had been conſtantly applied to the Support only of the Epiſcopal Clergy.

Col. *Morris*, would have moved for a Repeal of the Tax, If he had not known that, Sir *Henry Moore*, had an Inſtruction againſt paſſing any Law to repeal a former Act, without a Clauſe, ſuſpending it till his Majeſty's Pleaſure was known.

Not a Member of the Aſſembly oppoſed the Bill he brought in at that Time, tho' after he was diſmiſſed from the Houſe, (as a Non-Reſident) it was from an exempting Bill, amended into a Bill, containing an implicative Repeal, for as altered it exempted every Denomination, Epiſcopal as well as Non-Epiſcopal from the Tax.

This Bill ſo altered, went up to the Council as a Bill deſired by the unanimous Voice of the whole Houſe; but was there rejected by a great Majority.

It could not but be agreeable to the People of this Colony in general, to ſee an End put to a Tax, which to ſay no worſe, was now become utterly unneceſſary: The Non-Epiſcopalians had long complained of it, and many Gentlemen of the Epiſcopal Denomination, openly declared their Averſion to the Continuance of this old Bone of Contention, and before and during the laſt Seſſion, which began in *November*, it appeared from the public Prints, that the People of *Richmond* County, not only petitioned the Houſe, but inſtructed their Members, to renew the Attempt for a Law exempting the Non-Epiſcopal Inhabitants. *Weſt-Cheſter* and *Queen's* gave their Members ſimilar Inſtructions; and ſo did many Perſons in *Orange* and *Dutcheſs* Counties; notwithſtanding the Members of *Orange* County publiſhed a Paper early in the Seſſion, calculated to diſcountenance the Subſcription, triumphing in the Suppoſition that the Deſign was abortive. Another Petition to the Houſe came from *Albany*, for the Repeal of the ſame Tax.

The Petitions and Inſtructions guarded the Members againſt a Converſion of the exempting Bill, (which could paſs) into a repealing Bill, which if the Governor ſhould adhere to the Letter of the King's Inſtructions, might not paſs, and urged the Purſuit of every Parliamentary Step for the Relief of the Counties expoſed to this Tax.

It might therefore have been expected, that an exempting Bill would have been brought in at the Commencement of the Seſſion, and ſent up to the Council as early as it could paſs through the Forms of the Houſe, for which three or four Days are ſufficient.

That Pains would alſo have been taken to quicken its Progreſs in the Council.

That if there were Difficulties, a Conference could have been had between both Houſes as uſual; and

If the Obſtacles on this Side the Water were unſurmountable, that a Petition would have been tranſmitted to his Majeſty, and Orders given to the Agent, to ſolicit for the Redreſs of this Grievance.

I ſay, this was hoped for by many who ſigned the Petitions and Inſtructions; but tho' the Seſſion continued above two Months, from the 21ſt of *November* to the 27th of *January*, the only Steps taken were theſe,

29th *November*: Mr. *Thomas* moved for a Bill to exempt Proteſtants of all Denominations, from paying to any Clergyman by compulſory Taxation: This being virtually a repealing Bill, Mr. *Dewitt*, the ſame Day renewed Col. *Morris's* Motion, for one to exempt the Inhabitants of the four Counties from any Taxation for the Support of Miniſters of Churches to which they do not belong.

Both Bills came in the 30th of *November*.

Theſe Bills were far from being inconſiſtent with each other; for though Mr. *Thomas's* could not take Effect had it paſſed (being a probationary Law) becauſe it was virtually a repealing Law, without the King's Confirmation: Yet that was no Reaſon againſt an immediate Exemption of Non-Epiſcopalians, by a Bill, which not being in Effect a repealing Law, required no ſuſpending Clauſe.——Mr. *Thomas's* Bill had a ſecond Reading the firſt of *December*, and was committed to the whole Houſe, but Mr. *Dewitt's* not, till the 6th of that Month.

It was the 12th of *January*, 1770, before Mr. *Thomas's* Bill came out of the Committee. It paſſed the next Day after, and was ſent up to the Council, where it was rejected on the 18th of the ſame Month.

Note. Before this Bill paſſed the Houſe, the Lieutenant Governor had already given his Aſſent to 21 Bills, many of them of inconſiderable Moment; and that there is not a Minute in the Journals of any Motion to quicken the Progreſs of either of the Exemption Bills in the Aſſembly.

As to Mr. *Dewitt's* Bill, it did not get out of the Houſe till two Days before the End of the Seſſion, which was the 27th of *January*; a Meſſage was then ſent to the Council, to know what Progreſs was made in it; and an Anſwer given, that it had been read once, and was ordered a ſecond Reading. And thus it was loſt; tho' it appears by the Journals, that Bills ſent up after it, were paſſed on that Day, when the Aſſembly was prorogued to the ſecond Tueſday in *March*. While it was in the Committee, a Motion was made to reject it; but this upon a Diviſion, was openly befriended only by Mr. *Cruger*, the Speaker, who made the Motion, Mr. *Walton* and Capt. *De Lancey*, three of the Members for the City of *New-York*, as by the Journals will appear at length.

That the Counties concerned and the whole World may know the Scope of this Bill, and judge of the Conduct of both Houſes, the following true Copy is exhibited to the public Inſpection.

Courtesy New-York Historical Society

18. BROADSIDE REGARDING ACT EXEMPTING NON-EPISCOPALIANS IN NEW YORK COUNTY FROM SUPPORT OF EPISCOPAL CLERGY

(*Continued on facing page*)

An ACT *to exempt the Inhabitants of the Counties of* Weſt-Cheſter, New-York, Queen's *and* Richmond, *from any Taxations for the Support of the Miniſters of Churches to which they do not belong.*

WHEREAS Proviſion was made for the Support of a certain Number of Proteſtant Miniſters of the Goſpel in the City of *New-York*, and the Counties of *Richmond*, *Weſt-Cheſter*, and *Queen's* County, by Vitue of a certain Act of the Governor, Council and General Aſſembly, entitled, *An Act for ſettling a Miniſtry, and raiſing a Maintenance for them in the City of* New-York, *County of* Richmond, Weſt-Cheſter, *and* Queen's *County*, paſſed on the Twenty-fourth Day of March, in the Year of our Lord One Thouſand Six Hundred and Ninety-three, expoſing Perſons of all Denominations to an annual Aſſeſſment for the Purpoſes aforeſaid, and granting the Advowſon or Right of calling the Miniſters, to the Veſtrymen and Church Wardens choſen by the Majority of the Freholders. AND *Whereas* by one other Act of the Governor, Council and General Aſſembly, paſſed on the Twenty-ſeventh Day of June, in the Year of our Lord One Thouſand Seven Hundred and Four, entitled, *An Act for granting ſundry Privileges and Powers to the Rector and Inhabitants of the City of* New-York, *of the Communion of the Church of* England, *as by Law eſtabliſhed*, the Advowſon of the ſaid Church and Right of Preſentation, is declared to belong to the Church Wardens and Veſtrymen thereof, elected by the Inhabitants of the ſaid City, in Communion with the ſaid Church. AND *Whereas* by one other certain Act of the Governor, Council and General Aſſembly, paſſed on the Fourth Day of Auguſt, in the Year of our Lord One Thouſand Seven Hundred and Five, entitled, *An Act for the better explaining and more effectual putting in Execution an Act of General Aſſembly*, entitled, *An Act for ſettling a Miniſtry and raiſing a Maintenance for them in the City of* New-York, *County of* Richmond, Weſt-Cheſter *and* Queen's *County*; it was enacted, that the reſpective Veſtrymen and Church Wardens for the Time being, of every reſpective Place, or the major Part of the ſaid Church Wardens and Veſtrymen, whereof one Church Warden always to be one, ſhould and were thereby impowered to call and preſent, after the Death of the ſeveral and reſpective then preſent Incumbents, a good ſufficient Proteſtant Miniſter, within one Year next after the Avoidance of any of the ſaid Places. AND *Whereas* while the Veſtrymen and Church Wardens ſo elected, have claimed the Right of Preſentation, the Governor or Commander in Chief for the Time being, hath claimed the Right of Induction; in Conſequence whereof, it has ſo happened that the Incumbents have always been ſuch Miniſters as were ordained according to the Uſage of the Church of *England*; and thus vaſt Sums ſince the paſſing of the firſt of the ſaid Acts have been raiſed, and chiefly by Taxations upon Proteſtants, not even excepting Miniſters of other Denominations, who are now, and always have been moſt numerous in the Places where the ſaid Proviſion is made, and have Miniſters to maintain of their own reſpective Perſuaſions, and who by Reaſon of the ſaid Taxations, are become greatly diſcontented, and more eſpecially ſince the Inhabitants of the Epiſcopal Denomination are able to ſupport their own Miniſters, and yet receive Aid in ſome Inſtances from the Society in *England* for propagating the Goſpel in Foreign Parts: AND *Whereas* many of the Inhabitants ſubject to the ſaid Tax are of the People called Quakers, to whom it is more peculiarly grievous, ſince their known Principles oblige them to ſubmit to expenſive Diſtreſſes upon Sales of their Goods and Chattels for raiſing their reſpective Quotas; and thus numerous Bodies of his Majeſty's faithful Proteſtant Subjects are in Effect puniſhed for exerciſing the Rights of Conſcience. That a juſt and ſuitable Remedy may therefore be provided in this Reſpect, and to prevent any diſguſting and burdenſome Diſcriminations, and to encourage that Liberty in Matters of Religion, which is juſt and reaſonable in itſelf, and ſo naturally conducive to the Proſperity, Cultivation, Growth and Tranquility of his Majeſty's *American* Dominions.

BE IT ENACTED *by his Honour the Lieutenant Governor, the Council and the General Aſſembly, and it is hereby Enacted by the Authority of the ſame*, That all ſuch Perſon or Perſons as are not in Communion with the Church of *England*, ſhall, from and after the Publication of this Act, be exempt, and they are hereby exempted from paying any Part of the ſaid Tax; and that ſuch Proportion of the ſaid Tax, as has been annually paid by Perſons not being in Communion with the Church of *England*, ſhall not for the future be raiſed in any of the ſaid Counties, or on any Part of the Inhabitants thereof; any Thing in the ſaid Act to the contrary notwithſtanding. And that the Right of Patronage, Advowſon and Preſentation now belonging to the Veſtrymen and Church Wardens elected by the People in general of the ſeveral Places in the ſaid Act or Acts mentioned, ſhall forever hereafter belong to the Veſtrymen and Church Wardens choſen by the major Part of the Inhabitants of the ſaid ſeveral Places, in Communion with the Churches therein, worſhipping according to the Rites of the Church of *England*; any Law or Uſage of this Colony to the contrary notwithſtanding.

A true Copy,

C. D.

In March, 1770, Colonel Lewis Morris and others tried to secure exemption of non-Episcopalians from tax support of the Episcopal Church which had been required since 1693. Their proposal passed the assembly unanimously, but was rejected by the conservative council. The accompanying new act proposed is given. Church-State separation was secured in 1777. See III, 2 (3) and V, 8, (9).

Courtesy Virginia Hittorical Society; photograph by Heustis P. Cook, Richmond, Va.

19. GEORGE MASON, 1725-92

From a copy owned by a descendant, of the original portrait of Mason who was largely responsible for the guarantee of religious freedom in the Virginia Declaration of Rights (1776), and influential in securing other similar guarantees for Virginia and in the Federal Constitution. See IV, 8, (3).

Courtesy New York Public Library

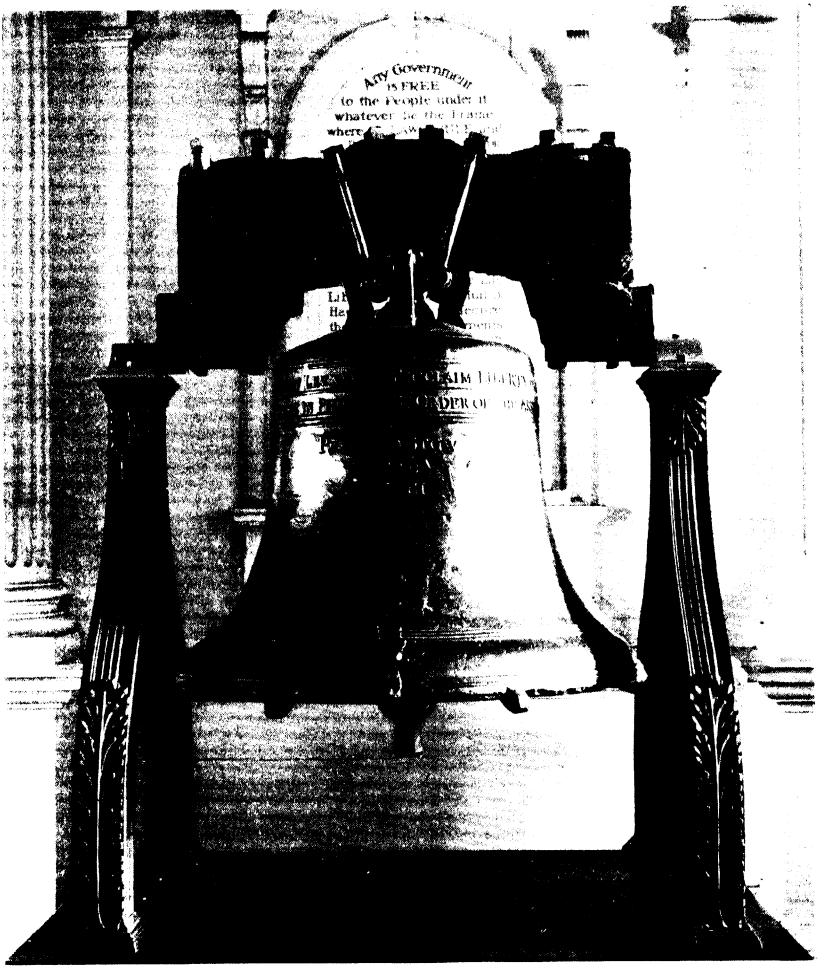
20. OLD VIRGINIA CAPITOL IN WILLIAMSBURG WHERE DECLARATION OF RIGHTS WAS ADOPTED, 1776

This is reproduced from an old English print in *Scribner's Monthly Magazine*, November, 1875. This capitol took the place of the impressive building (1705-47), recently reconstructed by "Colonial Williamsburg" with Mr. Rockefeller's help. When the Declaration of Rights was adopted the building also had a cupola and two wings. See V, 3, (4).

Courtesy New York Public Library

21. INDEPENDENCE HALL, PHILADELPHIA

From an inset in a rare plan of Philadelphia drawn by A. P. Folie in 1793 and issued the following year. It is now in the Phelps-Stokes Collection. In the central building, the "State House," the legislature of Pennsylvania met for the first time in 1736. This is now Independence Hall and here the Continental Congress held many of its sessions. Here also both the Declaration of Independence was signed in 1776 and the Federal Constitution drafted in 1787, two important events leading to Church-State separation in the United States. "Congress Hall" on the right was finished in 1789. Here the United States Congress met from December, 1790, to its removal to Washington in 1800. See VI, 3; VIII, 1.



Courtesy National Museum, Independence Hall

22. THE LIBERTY BELL, 1752-53

In 1751 the Assembly of Pennsylvania ordered in England a new bell for the state house in Philadelphia then nearing completion, to bear this inscription:

By order of the Assembly of the Province of Pennsylvania for the State House in the City of Philadelphia, 1752.

Proclaim Liberty throughout all the land unto all the inhabitants thereof—Lev. XXV. 10.

It was duly received but cracked in testing. It was recast by Pass & Stow in Philadelphia in 1753. For our purposes the bell is specially significant for four reasons: its name "Liberty Bell"; its inscription from the Old Testament; its use to proclaim the Declaration of Independence and other great national events; its being ordered for a colony dedicated by Penn to the cause of civil and religious freedom. See VI, 3.

SATURDAY, JULY 10, 1779.

THE

Pennsylvania Packet
OR
GENERAL ADVERTISER

THE

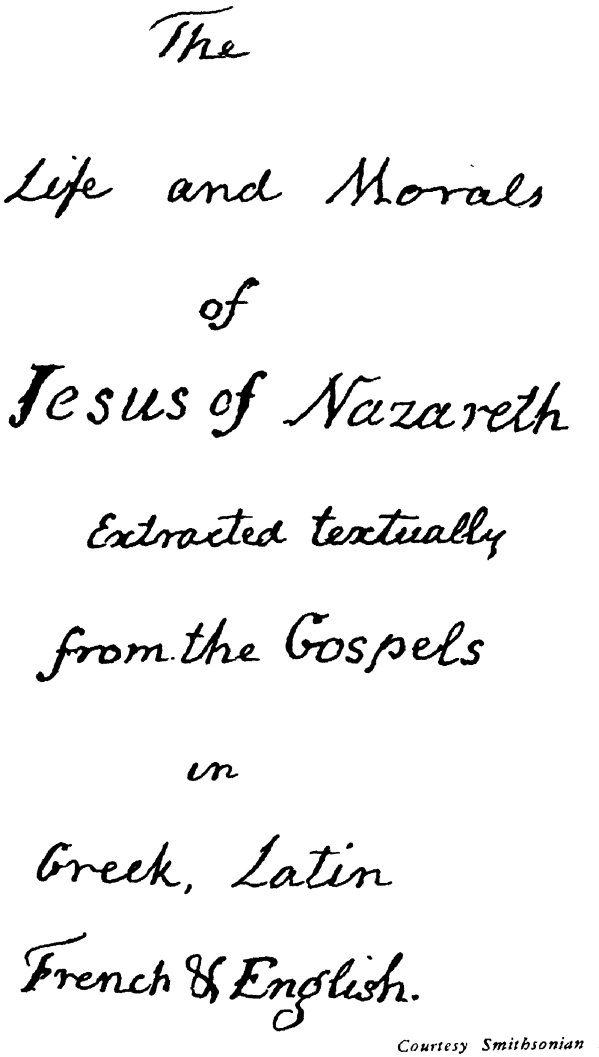
[Price 2s. 6d. fingle, 2s. by the Quarter. Published every Tuesday, Thurfday and Saturday.]

PHILADELPHIA

PHILADELPHIA.

ON Sunday laſt, the 4th of July, being the Anniverſary of the day which gave Freedom to the vaſt Republic of America, the Congreſs, the Preſident and Council of the State, with other the civil and military officers, and a number of principal gentlemen and ladies, at twelve o'clock attented at the Roman Chapel, agreeable to invitation received from the Miniſter Plenipotentiary of his Moſt Chriſtian Majeſty. A Te Deum was performed on the occaſion, to the great ſatisfaction of all preſent. And his Excellency's Chaplain delivered a ſhort and elegant addreſs to his audience, of which we have been favoured with the following copy.

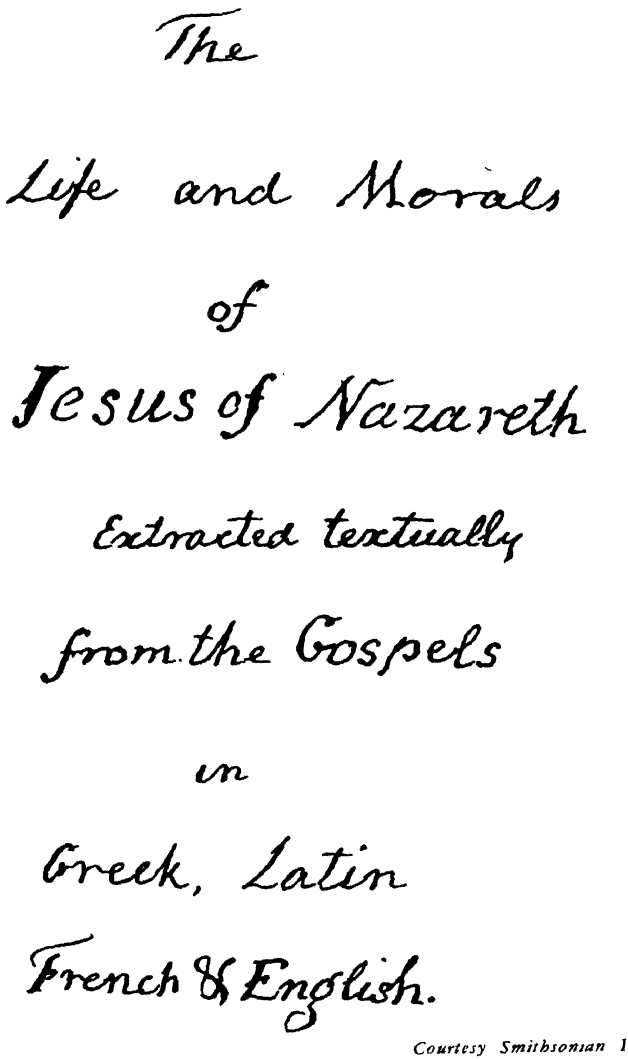
XXXX



Courtesy Smithsonian Institution

25. JEFFERSON'S "THE LIFE AND MORALS OF JESUS OF NAZARETH"

This compilation in Jefferson's handwriting was published in 1904 by authority of Congress, with an introduction by Cyrus Adler. It shows Jefferson's interest in, and respect for, the teachings of the founder of Christianity. He referred in a letter to Charles Clay, January 29, 1815, to this collection he was making of the "moral precepts of Jesus" as "fragments of the most sublime edifice of morality which had ever been exhibited to man." See IV, 8, (10).



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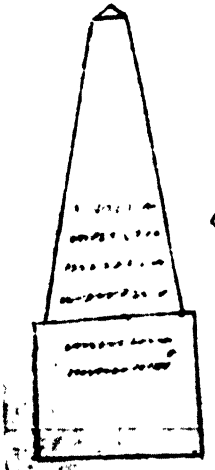


could the dead feel any interest in Monuments or other remembrances of them, when, as Thucydides says Ὀλίγη δὲ λείψουσιν Κενὸς, ὡς ἐν ἀνδρῶν

The following would be to my Manes the most gratifying.

On the [illegible] a plain die or cube of 3.f without any mouldings, surmounted by an Obelisk of 6.f. height, each of a single stone: on the faces of the Obelisk the following inscription, & not a word more.

Here was buried

Thomas Jefferson

Author of the Declaration of American Independance

of the Statute of Virginia for religious freedom

& Father of the University of Virginia.

because by these, as testimonials that I have lived, I wish most to be remembered. [redacted] to be of the coarse stone of which my columns are made, that no one may think himself tempted hereafter to destroy it for the value of the materials.

my bust by Ciracchi, with the pedestal and truncated column on which it stands, might be given to the University if they would place it in the Dome room of the Rotunda.

on the Die of the Obelisk might be engraved

Born Apr. 2. 1743. O.S.

Died ---

Courtesy University of Virginia Library

26. JEFFERSON'S DESIGN FOR HIS MONUMENT

The monument at Monticello with its summary of Jefferson's major achievements is well known. His instructions show that it was not as president or secretary of state that he wished to be honored, but for four accomplishments which no one could share. Among these was "Author . . . of the Statute of Virginia for religious freedom . . ." See V, 3, (5).

IN THE UNITED STATES in CONGRESS ASSEMBLED:

September 12th, 1782.

THE Committee to whom was referred a Memorial of Robert Aitken, Printer, dated 21st January, 1781, respecting an edition of the Holy Scriptures, report, "That Mr. Aitken has, at a great expence, now finished an American edition of the Holy Scriptures in English, that the Committee have from time to time attended to the progress of the work, that they also recommended it to the two Chaplains of Congress to examine and give their opinion of the execution, who have accordingly reported thereon; the recommendation and report being as follows:

"Philadelphia, 18th September, 1782.

"Reverend Gentlemen,

"OUR knowledge of your piety and public spirit leads us without apology to recommend to your particular attention the edition of the Holy Scriptures published by Mr Aitken. He undertook this expensive work at a time when, from the circumstances of the war, an English edition of the Bible could not be imported, nor any opinion formed how long the obstruction might continue. On this account particularly we deserves applause and encouragement. We therefore wish you, Reverend Gentlemen, to examine the execution of the work, and if approved, to bear it the sanction of your judgment, and the weight of your recommendation.

We are, with very great respect,
Your most obedient humble servants.

(Sign'd) JAMES DUANE, Chairman in behalf of a Committee of Congress on Mr. Aitken's Memorial.

To the Reverend Doct. White and Revd Mr. Duffield, Chaplains of the United States in Congress assembled.

Report.

Gentlemen,

AGREEABLY to your desire we have paid attention to Mr. Robert Aitken's impression of the Holy Scriptures of the Old and New Testament. Having selected and examined a variety of passages throughout the work, we are of opinion that it is executed with great accuracy to the sense, and with as few grammatical and typographical errors could be expected in an undertaking of such magnitude. Being ourselves witnesses of the demand for this invaluable book, we rejoice in the agreeable prospect of a supply; hoping that it will prove as advantageous as it is honorable to the Gentleman, who has exerted himself to furnish us, at this critical juncture of private fortune. We are, Gentlemen,

Your very respectful and humble servants,

(Sign'd) WILLIAM WHITE,
GEORGE DUFFIELD.

Philadelphia, September 20th, 1782.

Hon'ble James Duane, Esq Chairman, and the other Hon'ble Gentlemen of the Committee of Congress on Mr Aitken's Memorial.

Whereupon,

RESOLVED,

THAT the United States in Congress assembled highly approve the pious and laudable undertaking of Mr Aitken, as subservient to the interest of religion, as well as an instance of the progress of arts in this country, and being satisfied from the above report of his care and accuracy in the execution of the work, they recommend this edition of the Bible to the inhabitants of the United States, and hereby authorize him to publish this Recommendation in the manner he shall think proper.

CHA. THOMSON, Secry.

¶ The Names and Order of all the Books of the OLD and NEW TESTAMENT, with the Number of their Chapters.

GEnesis hath	Chapters 50	II. Chronicles hath	Chapters 36	Daniel hath	Chapters 12
Exodus	40	Ezra	10	Hosea	14
Leviticus	27	Nehemiah	13	Joel	3
Numbers	36	Esther	10	Amos	9
Deuteronomy	34	Job	42	Obadiah	1
Joshua	24	Psalms	150	Jonah	4
Judges	21	Proverbs	31	Micah	7
Ruth	4	Ecclesiastes	12	Nahum	3
I. Samuel	31	The song of Solomon	8	Habakkuk	3
II. Samuel	24	Isaiah	66	Zephaniah	3
I. Kings	22	Jeremiah	52	Haggai	2
II. Kings	25	Lamentations	5	Zechariah	14
I. Chronicles	29	Ezekiel	48	Malachi	4
MAtthew hath	Chapters 28	Ephesians	6	To the Hebrews hath	Chapters 13
Mark	16	Philippians	4	Epistle of James	5
Luke	24	Colossians	4	I. Peter	5
John	21	I Thessalonians	5	II. Peter	3
The Acts	28	II Thessalonians	3	I. John	5
The Epistle to the Romans	16	I. Timothy	6	II. John	1
I. Corinthians	16	II. Timothy	4	III. John	1
II. Corinthians	13	Titus	3	Jude	1
Galatians hath	Chapters	Philemon	1	Revelation	22

¶ The First Book of

MOSES, called GENESIS.

CHAP. I

IN the beginning God created the heaven and the earth.

2 And the earth was without form, and void, and darkness was upon the face of the deep. and the Spirit of God moved upon the face of the waters.

3 And God said, Let there be light: and there was light.

4 And God saw the light, that it was good: and God divided the light from the darkness.

5 And God called the light Day, and the darkness he called Night: and the evening and the morning were the first day.

6 ¶ And God said, Let there be a firmament in the midst of the waters, and let it divide the waters from the waters.

7 And God made the firmament, and divided the waters, which were under the firmament, from the waters which were above the firmament: and it was so.

8 And God called the firmament Heaven. and the evening and the morning were the second day.

9 ¶ And God said, Let the waters under the heaven be gathered together unto one place, and let the dry land appear: and it was so.

10 And God called the dry land Earth, and the gathering together of the waters called he Seas and God saw that it was good.

11 And God said, Let the earth bring forth grass, the herb yielding seed, and the fruit-tree yielding fruit after his kind, whose seed is in itself, upon the earth: and it was so.

12 And the earth brought forth grass, and herb yielding seed after his kind, and the tree yielding fruit, whose seed was in itself, after his kind: and God saw that it was good.

13 And the evening and the morning were the third day.

14 ¶ And God said, Let there be lights in the firmament of the heaven, to divide the day from the night: and let them be for signs, and for seasons, and for days, and years.

15 And let them be for lights in the firmament of the heaven, to give light upon the earth: and it was so.

16 And God made two great lights: the greater light to rule the day, and the lesser light to rule the night: he made the stars also.

17 And God set them in the firmament of the heaven, to give light upon the earth,

18 And to rule over the day and over the night, and to divide the light from the darkness: and God saw that it was good.

19 And the evening and the morning were the fourth day.

20 ¶ And God said, Let the waters bring forth abundantly the moving creature that hath life, and fowl that may fly above the earth in the open firmament of heaven.

21 And God created great whales, and every living creature that moveth, which the waters brought forth abundantly after their kind, and every winged fowl after his kind. and God saw that it was good.

22 And God blessed them saying Be fruitful, and multiply, and fill the waters in the seas, and let fowl multiply in the earth,

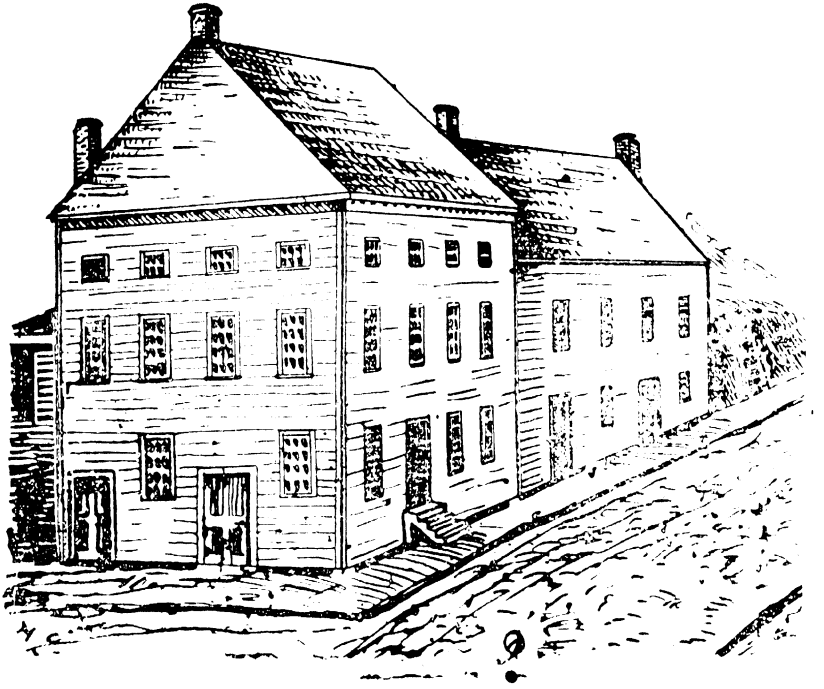
A 2

23 And

Courtesy Smithsonian Institution

27. THE "BIBLE OF THE REVOLUTION," 1782

Sheets following the title page of Robert Aitkens' Bible, giving the report of the chaplains of Congress on the accuracy of his printing of this first English version in America, together with a copy of the resolutions of the Continental Congress recommending "this edition of the Bible to the people of the United States." The Secretary of Congress who attested this resolution was a Biblical scholar—the first American translator of the Bible into English (based largely on the Septuagint). See VI, 6.



Courtesy Virginia Historical Society and Valentine Museum

28. TEMPORARY CAPITOL WHERE VIRGINIA BILL FOR RELIGIOUS FREEDOM WAS ADOPTED, 1785

The only known view of this historic building, duly commemorated today on the corner of Fourteenth and Cary Streets, Richmond. The original has been lost, but this copy is taken from the *Richmond Dispatch*, May 21, 1885. The title is due to the fact that it was published in connection with the centennial council of the Episcopal Diocese of Virginia meeting in Richmond. The Virginia House of Delegates apparently met in this building; the Senate in an adjoining one-story building. See V, 3 (5).

Courtesy Yale University Library

29. JAMES MADISON, 1751-1836

Caracchi's bust of Madison is taken from Rives, William Cabell, *The Life and Times of James Madison*. It is also given as the frontispiece of Irving Brant's *James Madison, the Nationalist, 1780-1787*. It represents Madison at the height of his influence in his efforts for Constitutional religious freedom. See IV, 8, (11).

Courtesy American Scenic and Historic Preservation Society, and Frick Art Reference Library

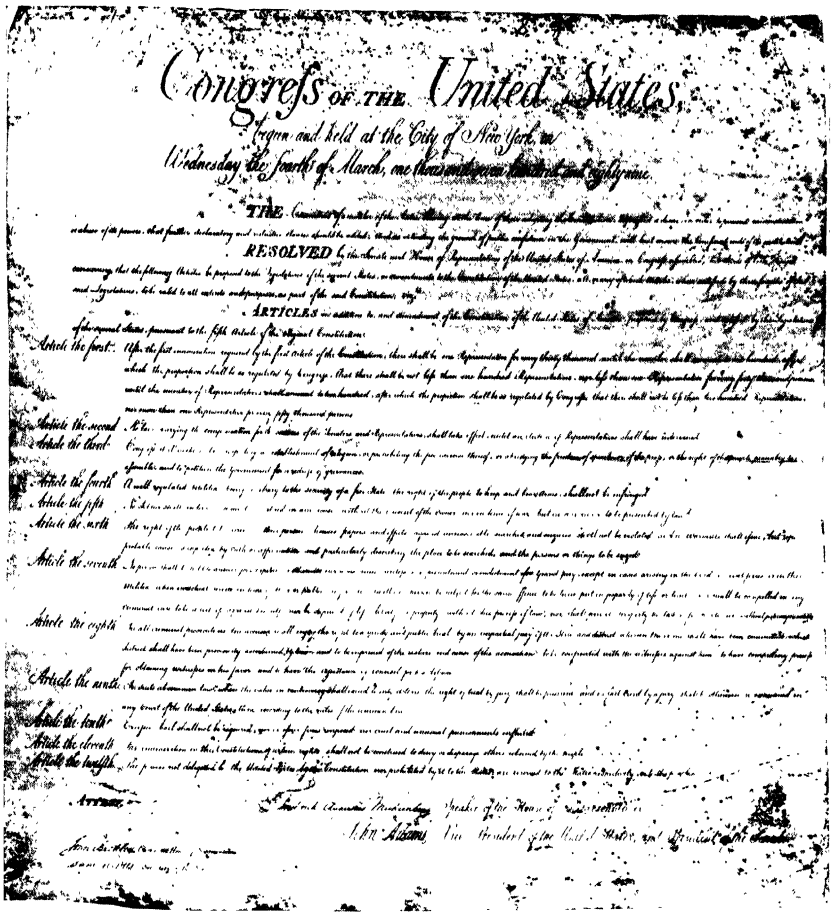
30. CHARLES PINCKNEY, 1757-1824

A portrait attributed to Gilbert Stuart of the South Carolina statesman who proposed the religious freedom clause in our Constitution. See IV, 8, (12).

Courtesy Yale University Art Gallery

31. SAMUEL LIVERMORE, 1732-1803

From miniature (1790) by John Trumbull of the author of "Livermore's motion" which was made the basis of the religious freedom guarantee in the Bill of Rights. His contribution to religious freedom seems heretofore to have been almost entirely overlooked. See IV, 8, (7); VIII, 2, (1).


Congress of the United States,
begun and held at the City of New York, on
Wednesday the fourth of March, one thousand seven hundred and eighty nine.
THE
RESOLVED
ARTICLES
Article the first.
Article the second
Article the third
Article the fourth
Article the fifth
Article the sixth
Article the seventh
Article the eighth
Article the ninth
Article the tenth
Article the eleventh
Article the twelfth
Frederick Augustus Muhlenberg Speaker of the House of Representatives
John Adams Vice President of the United States, and President of the Senate

Courtesy the National Archives

32. BILL OF RIGHTS, 1789-91

It will be noted that the religious freedom guarantee is the third, not the first. This is because the first two articles were not ratified by the necessary number of states, leaving the third as the first. These twelve articles of amendment were passed by Congress September 25, 1789. The last ten, including the religious freedom guarantee, were ratified by the required number of states December 15, 1791. See VIII, 2.

declare an act of Congress or of a state legislature unconstitutional if in its judgment the facts in a given case warranted. This occurred in 1803 when Chief Justice Marshall (1755–1835) wrote the opinion of a unanimous court, in *Marbury* v. *Madison*. Although in this case the constitutionality of the Act was affirmed, the fact that the court considered it showed that it believed in its Constitutional right and duty to disallow an act of Congress, and consequently, a fortiori, an act of a legislature, if it found it contrary to the Constitution of the United States. This decision was to prove of great value in protecting the freedoms of the Bill of Rights, including religious freedom.

The Marbury case seemed of itself relatively unimportant. It came up in connection with the application by Marbury for a writ of mandamus under section 13 of the Judiciary Act. The question was complicated by political issues. The leading member of what was then called the Republican party, Thomas Jefferson, was president, and that party—as was shown by the Virginia and Kentucky resolutions—was opposed to any interference by the Supreme Court with the legislative acts of Congress. Virginia and Kentucky had actually declared a national law null and void, representing as they did the extreme state rights point of view. In opposition to them some ten states controlled by the Federalists had passed resolutions to the effect that the national judiciary alone had the power to invalidate acts of Congress,[175] but in none of these cases had the Republican minority concurred. The action of Massachusetts was perhaps as clear-cut as any. It had taken the ground during this discussion that the

> legislature are persuaded that the decision of all cases in law or equity, arising under the Constitution of the United States, and the construction of all laws made in pursuance thereof, are exclusively vested by the people in the Judicial Courts of the U. States.[176]

But the South had repudiated Federalism. Marshall realized the seriousness of the situation from the standpoint of an effective Federal government. He made up his mind to take the first valid opportunity to have the Supreme Court make use of its powers, implied in the Constitution and specifically given to it under the Judiciary Act of 1789. In other words he was willing to fight for the independence of the judiciary, for he believed that

> The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts alterable when the legislature shall please to alter it. It is emphatically the province and duty of the judicial department to say what the law is. This is the very essence of judicial duty.[177]

In the Marbury case he stated this theory in an unmistakable way:

> . . . It is a proposition too plain to be contested, that the Constitution controls any

legislative act repugnant to it. . . . A legislative act contrary to the Constitution is not law. . . . It is emphatically the province and duty of the judicial department to say what the law is. . . .[178]

The fundamental phrase in the opinion is the one in which he states "that a law repugnant to the constitution is void," and that all departments of the government are bound by the Constitution. In these nine words religious liberty in the United States received one of its surest supports. By them, it is generally agreed, Chief Justice Marshall made the principle of judicial review a definite and recognized part of our fundamental law, and declared for all time that the Supreme Court had the power to declare invalid any act of Congress or any act of any state legislature which was, in the opinion of the court, clearly unconstitutional.[179]

Later, in 1803, the Supreme Court, referring to the Judiciary Act of 1789 said that practice and acquiescence under it [the Judiciary Act of 1789] for a period of several years, commencing with the organization of the judicial system . . . has fixed the construction. It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled. Of course, the question is at rest, and ought not now to be disturbed.[180]

Senator Beveridge, in his *Life of John Marshall,* sums up the significance of the Marbury decision:

Thus, by a coup as bold in design and as daring in execution as that by which the Constitution had been framed,[181] John Marshall set up a landmark in American history so high that all the future could take bearings from it, so enduring that all the shocks the Nation was to endure could not overturn it. Such a decision was a great event in American history. State courts, as well as National tribunals, thereafter fearlessly applied the principle that Marshall announced, and the supremacy of written constitutions over legislative acts was firmly established. [182]

By other decisions, especially *Martin* v. *Hunter's Lessee* in 1816 and *Cohens* v. *Virginia* in 1821, the Supreme Court, speaking through the chief justice, maintained the constitutionality of Section 25 of the Judiciary Act of 1789, sustaining it against an attack based on state rights premises. By the latter decision it was held that Congress could lawfully pass an act which permitted a person convicted in a state court to appeal to the United States Supreme Court if he alleged that the state act under which he was convicted conflicted with the Federal Constitution or with an act of Congress.[183] It is interesting to note, however, that it was not until the Dred Scott case in 1857 that the court actually declared another act of Congress void, though in recent years we have become accustomed to the procedure.

With the Judiciary Act of 1789, and the practice developed by the Supreme

Court after 1803 in assuming judicial authority to pass on the constitutionality of laws, the general cause of freedom was further protected against local attempts to interfere with it. We shall consequently see as our studies proceed that the courts of the land, and especially the Supreme Court, have on the whole been the protectors of our Constitutional and historical separation of Church and State. But they had to await the adoption of the Fourteenth Amendment (1866–68) before this protection could be made complete.[184]

Section 4. THE COMMON LAW AND EQUITY

The Constitution (Amendment VII) preserves the right of trial by jury in "Suits at common law," and specifically states that "no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law . . . ," which the courts have always affirmed to be a part of the law of the land. These quotations show the formal recognition of the common law in the Constitution.

This law represents the fundamental law followed among English-speaking people, which, like the English constitution, has not been formally and officially codified in Roman (civil) law fashion. There are no common law offences against the United States, but the law has force because of its general acceptance by Federal and state courts throughout the country.[185] It has been somewhat modified by legislation and court decisions, but may be said to be in substance the old English common law in force at the time of the formation of our government, as adapted to American conditions. The doctrine of the "unalienable Rights" of man, as embodied in the Declaration of Independence and our national and state bills of rights, is in the main derived from common law rights. These are at the very basis of our jurisprudence, and were developed by our English forebears under the humanizing influence of Christianity. Puritanism was also, according to Dean Pound, formerly of the Harvard Law School, a controlling factor in "moulding the spirit of our Common Law."[186]

Legislation and constitutions represent, as Sir Henry Maine pointed out two generations ago, the last stage in legal development. This begins with a single judgment on a particular case, and is followed by custom and usage, which become the "common" law, and then by equity. Constitutions merely summarize, and in some cases modify, fundamental pre-existent laws and political practice, and what is said of the common law—the generally recognized nonstatutory law—also applies with equal strength to equity. The chancery courts, which, independently or as special activities of the regular courts, render decisions in equity cases, have necessarily been profoundly influenced by the Christian ethical standards inherited from England. These courts were estab-

lished for the definite purpose of avoiding overemphasis on technicalities, and stressed instead the broad principles of ethics as developed first under Roman law and later under Christianity. This ethical note is both emphasized and influenced by the fact that the early English chancellors, who administered equity as representatives of the king and to prevent possible injustices of the originally distinct civil law courts, were ecclesiastics who were supposed to give large weight to moral principles in deciding each case.

The common law varied in the degree in which it was followed as the law to which they had been accustomed in the different colonies, but it was everywhere influential. Each colony "showed a mixture of its own, composed of common law principles plus features due to local conditions, besides sometimes practises derived from the Bible."[187] This last characteristic was specially strong in Massachusetts, where the influence of the Old Testament on law and legislation was marked.

It is fair, then, to say that the common law inherited from England with its agelong Christian tradition, and with a large body of equity decisions, tends to maintain the essentially Christian standards and ideals of the American government. The influence of Blackstone's *Commentaries on the Laws of England* was of supreme importance in this connection, as a link with the laws and legal practices of England. This work appeared in the years 1764–69, just before the outbreak of the Revolution. It was promptly reprinted in Philadelphia (1774) in an edition of fourteen hundred copies, and it is said that with imports included, over two thousand copies were soon sold in the American colonies. It convinced the patriots that the common law was the guardian of ancient liberties. Its "modern" and comprehensive character made it the recognized storehouse of legal knowledge, and the basis of legal instruction, in the early days of the republic. Blackstone emphasized the personal rights of the individual, and showed that liberty was one of the basic rights of Englishmen.

The common law, being the product of the struggle for ordered liberty of the English people, protected the freedom of the individual much more than the civil law based on the old Roman law of the continent. But even this recognized that man as man has certain inherent rights. As Napoleon stated to the Protestant pastors who gathered at the Tuileries in the year XII (1803): "The empire of the law ends where the undefined empire of conscience begins; law and prince are powerless against this liberty."[188]

Walter Lippmann declares that "The specific achievements of liberals were founded upon the supremacy of a common law replacing the dominion of men over men."[189] Respect for the fundamental, inherent rights of man really underlies our whole system of government. This common-law theory, involving the acceptance of individual rights as "unalienable," was of special importance

before the Bill of Rights became part of our written Constitution, and continues its usefulness today as a generally recognized support of such rights. It was Chief Justice Marshall who in a well-known case—*Fletcher* v. *Peck*—wrote the opinion that declared invalid a statute of Georgia. This was not only because it specifically violated provisions in the Federal Constitution, but because it was contrary to the general principles which are common to our institutions.[190] These general principles have their foundation very largely in common law and equity, as applied and interpreted in this country to fit into the framework of a democratic State. Furthermore, some states specifically continued the common law, subject to certain necessary modifications. For instance, the 1777 constitution of New York state included an article (No. 35) and continued it in force except as it might be construed to establish or maintain any particular denomination of Christians or their members.[191] According to Thorpe it has been specifically adopted in four other states—Delaware, Florida, Michigan, and New Jersey.[192]

Louisiana has been a marked exception to most other American states in the matter of the English common law. This is due to French and Spanish influences. As early as 1664 the "custom" of Paris was extended so as to be the law of New France, including, subsequently, Louisiana. After various experiments with the Roman law there was promulgated in 1825 the Civil Code of Louisiana based on the Code Napoleon, but, strangely enough, it was largely the work of Edward Livingston (1764–1836) of New York who was afterward secretary of state under President Jackson. This codification of the law, based on continental traditions, was copied to some extent by a few western states and had its influence on the later New York codification.

Section 5. THE FOURTEENTH AMENDMENT (1866–68)

The courts have varied in their interpretation of the Bill of Rights and other constitutional provisions; but in general there has been in the United States no prohibition of the free exercise of religion, and no loyal American has seriously proposed—unless Utah under Mormon influence is considered an exception (XIV, 7, XVI, 3)—to bring about by law the establishment of religion in the nation as a whole or in any state under the auspices of any particular Church. The nation is, and plans to continue, entirely free from any ecclesiastical entanglements. And yet there is no specific provision in the Federal Constitution, as adopted and amended a century and a half ago, preventing a state from continuing or instituting an official bond between it and some Church. Prior to the ratification of the Fourteenth Amendment in 1868, an Established Church was a possibility in any of the thirteen original states if the

people wished to provide for it in their constitution and statutes; and, as we shall see later, Connecticut, New Hampshire, and Massachusetts did not completely break their state bonds with Congregationalism until 1818, 1819, and 1833.[193] The religious-freedom guarantees of the original Constitution and Bill of Rights were a restraint on Congress, not on the state legislatures.[194]

Chief Justice Marshall (1755–1835), referring, in an opinion written in 1833, to the ten amendments in the Bill of Rights, said:

> These Amendments contain no expression indicating an intention to apply them to the State governments. This Court cannot so apply them. . . . The fifth amendment is intended solely as a limitation on the exercise of power by the Government of the United States and is not applicable to the legislation of the States.[195]
>
> Had Congress engaged in the extraordinary occupation of improving the Constitution of the several States by affording the people additional protection from the exercise of power by their own governments in matters which concerned themselves alone, they would have declared this purpose in plain and intelligible language.[196]

Similarly, the Supreme Court of the United States, in 1845, in deciding an important case, held:

> The Constitution of 1789 makes no provision for protecting the citizens of the respective states in their religious liberties; this is left to the state constitutions and laws; nor is there any inhibition imposed by the Constitution of the United States in this respect on the states.[197]

This fact—reaffirmed by the higher courts in a score or more of cases—seems little known to most of the intelligent citizens of the United States. Repeated questioning of friends, and references in books and newspapers, convince me that, outside of the legal profession and special students of government, there are relatively few persons who understand the limited scope of this clause of the Constitution. Even so important a book as Dr. William Adams Brown's *Church and State in America* (1936), although recognizing that the original Constitution and the First Amendment "did not change the legal status of religion in the states,"[198] lays no emphasis on this fact. Seldom have I found any works other than legal treatises that call adequate attention to it. A noticeable exception is the admirable paper (1937) by Professor Valentinus T. Schaaf, O.F.M., entitled *De Libertate Cultus in Statibus Foederatis Americae*.[199] It was also clearly understood by James Bryce (1838–1922), who, speaking of Article VI of the original Constitution and the First Amendment, said:

> They affect the National Government only, placing no inhibition on the States, and leaving the whole subject to their uncontrolled discretion, though subject to the general guarantees against oppression.[200]

Strangely enough, however, this great English publicist makes no reference to the further guarantees of religious freedom implied or latent in the Fourteenth Amendment. After the original Constitution and the Bill of Rights, this amendment is the most important constitutional provision affecting religious freedom. It was adopted in connection with the abolition of slavery at the close of the Civil War. Its first section is specially important in extending to the states the Federal Constitutional guarantee contained in Amendment V of the Bill of Rights against deprivation "of life, liberty, or property, without due process of law." It reads in full as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[201]

Each of these statements is significant from the standpoint of the theme of these volumes, but the latter part is considered the most important as extending to the states various constitutional guarantees originally applying only to the Federal government and its jurisdiction. It has been applied by Federal courts so as to void state laws violating not only such fundamental rights as freedom of speech (including teaching), press, and assembly, but also very recently freedom of religion.

The relation of the Fourteenth Amendment to the religious freedom issue is primarily as it serves to channel the First Amendment, originally intended merely to cover the Federal government, to the states. Here the historic development by the court during the past seventy-five years of the applicability of the Fourteenth Amendment to cases of religious freedom has been mainly related to the new understanding of "due process" in the clause "nor shall any State deprive any person of life, liberty, or property, without due process of law." This is now interpreted as involving not merely procedure in an orderly and legal way, but reasonable procedure and reasonable law, and of this reasonableness the Supreme Court is the arbiter. Some authorities, such as Mr. Justice Black, believe that the Fourteenth Amendment makes the First Amendment with its Bill of Rights entirely applicable to the states; others, such as Mr. Justice Frankfurter and a majority of the Supreme Court, think that it applies only to "basic freedoms."

This is the new substantive theory of law: that the substance or content of the law, the law itself, must be reasonable in order to be Constitutional. The theory was widely used a generation ago by the corporations to protect their

"property" against social legislation; now it is used to protect various fundamental personal rights and liberties of the First Amendment.

The second clause of the Fourteenth Amendment that may have significance for religious freedom is, in the judgment of Mr. Justice Black and some other jurists, that which protects the "privileges or immunities of citizens of the United States," among which, they believe, are the privileges of religious freedom and of immunity from a national establishment as prohibited by the First Amendment.

(1) THE SUPREME COURT'S INTERPRETATION PRIOR TO 1923

The common early interpretation of the religious freedom guarantee of the Federal Bill of Rights has been given above [VIII, 2, (2)] in the discussion of the case of *Permoli* v. *First Municipality of New Orleans*. But this hands-off attitude of the Federal courts in relation to religious freedom in the states was little by little to be given up after the passing of the Fourteenth Amendment.

The much-discussed section of this Civil War Amendment (adopted by Congress in 1866 and ratified in 1868) was formulated by the Honorable John A. Bingham (1815–1900) of Ohio, a member of the House. It is well therefore to know his interpretation of it.

> The purpose of the amendment, in the thought of its framers [he said] was to protect by *national* law the privileges and immunities of all the citizens of the Republic and the inborn rights of every person within its jurisdiction whenever the same shall be abridged or denied by the unconstitutional acts of any State.[202]

But it was many years before the Supreme Court fully accepted this broad interpretation. In 1873, when the question of the relationship of the amendment to rights arising under state constitutions and state laws came up in the Slaughterhouse cases, the Supreme Court held, in a 5–4 decision, that it did not apply to "privileges and immunities," derived from the states, or to the civil rights "which belong to citizens of the States as such."[203] There was a strong dissenting opinion by Justice Stephen Field (1816–99), as well as others by Justices Joseph P. Bradley and Noah Swayne. Their position is a striking example of the truth often brought out in American constitutional history that able dissenting opinions in one generation influence majority views of our courts a generation later. As Justice Field was the leading early minority advocate of the view which two generations later was accepted by the court, although in somewhat different form, it is interesting to know the genesis of his opinion. It appears that in the case referred to he was persuaded by a former member of the court, John A. Campbell (1811–89), who was pleading before it in behalf of the injured butchers of New Orleans, that the Fourteenth

Amendment was designed to afford a permanent and powerful guarantee of the natural rights of man—"Life, Liberty, Property, Protection, Privilege and Immunity"—in other words, that these natural and inalienable rights were recognized as part of the Constitution of the United States.[204] As a result, he prepared his historic dissenting opinion.

In 1879 a Federal Court gave the first decision intimating that the Fourteenth Amendment is applicable to the protection of religious liberty. Here Justice Field again showed himself true to his former convictions, although this time the decision was based on the equal protection clause of the Constitution. He stated in a circuit court case that:

> In our country hostile and discriminating legislation by a statute against persons of any class, sect, creed or nation, or whatever form it may be expressed, is forbidden by the fourteenth amendment.[205]

In 1885 he expanded this doctrine by way of dictum in another opinion:

> The Fourteenth Amendment . . . undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts. . . .[206]

This general point of view was also shared in various dissenting opinions by Justice John M. Harlan (1833–1911), but the Supreme Court majority, considering the main antislavery purpose of the Fourteenth Amendment, continued to disregard its applicability to state cases directly involving religion.[207] This is the more surprising to the lay mind, because a common provision in state constitutions is that procedure involving life, liberty, or property must conform to the law of the land.[208] Furthermore, the court itself, though making no mention of the applicability of the Fourteenth Amendment, had in 1871 by a bare majority, with two members absent and two not voting, asserted in *Watson* v. *Jones* that

> The full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.[209]

It should be remembered that this early decision represented the opinion of only three members of the Supreme Court, and for this and other reasons

it was not sufficient to change immediately the long established tradition that the religious-freedom guarantees of the Constitution were applicable to state cases only. Its importance, however, may be seen from the many references to it in Zollmann.

Evidence of the historic conservatism of our supreme judicial tribunal in the interpretation of the Bill of Rights may be seen in the unanimous opinion of the court delivered by Chief Justice Waite (1816–88) in 1887 in the case of *Spies* v. *Illinois*. The court said:

> That the first ten Articles of Amendment were not intended to limit the powers of the state governments in respect to their own people, but to operate on the National Government alone, was decided more than a half century ago, and that decision has been steadily adhered to since. . . .[210]

But perhaps the most impressive statement of this conservative point of view as specifically applied to the scope of the Fourteenth Amendment is a case decided by a United States circuit court in 1891. Here it was held that:

> The fourteenth amendment of the Constitution of the United States has not abrogated the Sunday laws of the States, and established religious freedom therein. The States may establish a Church or Creed, and maintain them, so far as the Federal Constitution is concerned. . . . As a matter of fact they (the founders of our government) left the States the most absolute power on the subject, and any of them might, if they chose, establish a creed and a church and maintain them.[211]

But there were forces at work advocating a different and broader interpretation of the scope of these amendments conceived along the general lines of reasoning which Justice Field had used.

(2) THE SUPREME COURT'S INTERPRETATION SINCE 1923

In 1897 the Supreme Court specifically adopted views of the meaning of the word "liberty," looking at it, however, primarily in its economic sense, which have their bearing on the major matters under consideration in these volumes. This was in the case of *Allgeyer* v. *Louisiana*. In the opinion of the court, delivered by Mr. Justice Peckham (1838–1909), it was declared, among other things, that the word "liberty" in the amendment referred to "is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties."[212] Little by little the interpretation of the word "liberty" was broadened, Mr. Justice Harlan expressing particularly strong views on the subject.

But, strangely enough, the Fourteenth Amendment was in force over half a century before it began to be made use of by the Supreme Court through a prevailing opinion to guarantee to the citizens of the individual states the fundamental provisions of the Bill of Rights regarding religious freedom. This

occurred in 1923, in a well-known case (*Meyer* v. *Nebraska*) regarding the constitutionality of a law prohibiting foreign-language schools for children under ten years of age. Here the United States Supreme Court stated, with two dissenting votes, that the Fourteenth Amendment denotes among other things the right of the individual "to worship God according to the dictates of his own conscience."

The opinion was one of such epoch-making significance in the history of religious freedom under the Federal and state constitutions that it is important to quote the two paragraphs bearing most directly on this matter:

> The problem for our determination is whether the statute as construed and applied unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment. "No State shall . . . deprive any person of life, liberty, or property, without due process of law." While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. . . .[213]

In discussing in 1933 this extraordinarily important decision, Zollmann said: "Whether this statement will be extended by farther decisions so as to draw to the United States Supreme Court the final decision in regard to all questions of religious liberty, only the future can tell."[214] As we shall see, the Supreme Court has gone further in this matter, but *Meyer* v. *Nebraska* remains a milestone in the protection of religious liberty guarantees by the Supreme Court.

In another case two years later (1925), involving a New York statute regarding "criminal anarchy," the United States Supreme Court, through Mr. Justice Sanford (1865–1930), declared that:

> For present purposes we may and do assume that freedom of speech and of the press —which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States.[215]

This was the first time that the word "liberty" in the phrase "Life, Liberty or Property" was interpreted by the court to include specifically the right of free speech. This is significant for our purposes, especially in view of other decisions of the court and of the opinion of Justice Cardozo, referred to later in this section.

The question of religious freedom was not involved in this case, but legal authorities considered it a fair inference that if the Fourteenth Amendment was applicable to the freedom of speech and of the press it was also applicable to the freedom of religion provided for in the same clause of the Bill of Rights.[126] The late Justice Oliver Wendell Holmes (1841–1925) delivered a dissenting opinion concurred in by Justice Brandeis. They believed that a New York statute declaring a person guilty of a felony and punishable who advocates criminal anarchy had been applied in this case in derogation of Constitutional rights, although they did not criticize the quoted statement. Indeed, Justice Holmes perhaps went beyond it by declaring that "The general principle of free speech, it seems to me, must be taken to be included in the Fourteenth Amendment, in view of the scope that has been given to the word 'liberty' as there used. . . ."[217]

A decade later (1934) in the Hamilton case, which involved the question of compulsory military training at the University of California, the Supreme Court was unanimously of the opinion that required military instruction did not infringe the "liberty" of students who were opposed on religious grounds to war, but it stated, after quoting the Fourteenth Amendment:

> There need be no attempt to enumerate or comprehensively to define what is included in the "liberty" protected by the due process clause. Undoubtedly it does include the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training.[218]

Justice Cardozo (1870–1938) filed a concurring opinion, joined in by Justices Brandeis and Stone, in which he said:

> I assume for present purposes that the religious liberty protected by the First Amendment against invasion by the nation is protected by the Fourteenth Amendment against invasion by the states. . . . The First Amendment, if it be read into the Fourteenth, makes invalid any state law "respecting an establishment of religion or prohibiting the free exercise thereof."[219]

Here is where this matter of the applicability of the Fourteenth Amendment to the guarantee of religious liberty in the First Amendment then stood in the opinion of a standard legal book of reference[220] published in 1937. Its author saw the handwriting on the wall:

> . . . The Supreme Court held, in a case decided before the adoption of the Fourteenth Amendment, that at that time there was no provision in the Federal Constitution for the protection of the religious liberties of citizens of the respective states and that this was left to the state Constitution and laws.[221] The states are now, however, probably precluded from abridging religious liberties by the due process clause of the Four-

teenth Amendment, for, although the Supreme Court has not passed directly on the question, it has stated that the liberty protected by the due process clause of the Fourteenth Amendment includes the right to worship God according to the dictates of one's own conscience. . . .[222]

In summing up the history of the decisions of the court on the applicability of the fundamental guarantees of the Bill of Rights, and more specifically of the right of free speech and of free press, Mr. Charles Warren (1868–) said:

Thus, we have this situation: in 1907, the Court expressly left the question undecided; in 1920, it stated that it did not consider it or decide it, but simply conceded it for the purposes of the case; in 1922, it stated that the Federal Constitution "imposes upon the States no obligation to confer upon those within their jurisdiction either the right of free speech or the right of silence." Yet, in 1925, it stated that "we may and do assume" that freedom of speech and of the press is one of the "fundamental personal rights and liberties" protected by the Due Process Clause. And hence, in 1925, the Court adopted as the law on this point, the dissenting opinions of Judge Harlan in 1907, and of Judge Brandeis in 1920.[223]

Mr. Warren felt, when he wrote the article referred to, that the court had gone too far in this matter. He said:

One may well view with some apprehension the field of interference with State legislation to which a logical extension of the *Gitlow* case doctrine must inevitably lead the Court. For, if as now assumed, the right of freedom of speech contained in the First Amendment to the Federal Constitution is a part of a person's "liberty" protected against State legislation by the Fourteenth Amendment, then the right of free exercise of his religion contained in the First Amendment must be also a part of a person's "liberty," similarly protected against State action. And on this ground, the United States Supreme Court may be called upon to pass on State laws as to religion and religious sects—a subject which, of all others, ought to be purely the concern of the State and its own people, and in no wise subject to interference by the National Government.[224]

This was written in 1926. Since then there have been several cases indicating that the Supreme Court was prepared to go further and more definitely in using the Fourteenth Amendment as a guarantee of religious freedom in the states.

The most interesting judicial discussion of the problem is contained in the case of *Palko* v. *State of Connecticut*, in which Mr. Justice Cardozo delivered the opinion of the Supreme Court on December 6, 1937. The decision of the Supreme Court of Errors of the state was contested on the ground that one Palko had been virtually tried twice under a state statute permitting appeals by the state in criminal cases under certain circumstances from a lower court

to the Supreme Court of Errors upon questions of law. The principal question at issue was whether the provision in the Fifth Amendment to the effect that no person shall be "subject for the same offense to be twice put in jeopardy of life or limb," had been made applicable to the states by the Fourteenth Amendment. The appellant's view was that the Fourteenth Amendment not only embodied the prohibition of the Fifth, but that whatever would be a violation of the original Bill of Rights if done by the Federal government is now equally illegal by force of the Fourteenth Amendment if done by a state. In the opinion of the court, which was concurred in by all of its members except Mr. Justice Butler, Mr. Justice Cardozo made a distinction between fundamental liberties and those of secondary importance. He showed that certain of the provisions in the Bill of Rights, such as the requirements for trial by jury, the provision that no person should be compelled in any criminal case to be a witness against himself, etc., could not be considered absolutely fundamental, for "they are not of the very essence of a scheme of ordered liberty." To abolish them is not to violate a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."[225]

The court, however, proceeded to say:

On the other hand, the due process clause of the Fourteenth Amendment may make it unlawful for a state to abridge by its statutes the freedom of speech which the First Amendment safeguards against encroachment by the Congress (*De Jonge v. Oregon*, 299 U. S. 353, 364; *Herndon v. Lowry*, 301 U. S. 242, 259) or the like freedom of the press (*Grosjean v. American Press Co.*, 297 U. S. 233; *Near v. Minnesota*, 283 U. S. 697,707), or the free exercise of religion (*Hamilton v. Regents*, 293 U. S. 245, 262; cf. *Grosjean v. American Press Co., supra; Pierce v. Society of Sisters*, 268 U. S. 510), or the right of peaceable assembly without which speech would be unduly trammeled (*De Jonge v. Oregon, supra; Herndon v. Lowry, supra*), or the right of one accused of crime to the benefit of counsel (*Powell v. Alabama*, 287 U. S. 45). In these and other situations immunities that are valid as against the federal government by force of the specific pledges of particular amendments[226] have been found to be implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment, become valid as against the states.[227]

After contrasting these fundamental rights with some of the others, he said:

We reach a different plane of social and moral values when we pass to the privileges and immunities that have been taken over from the earlier articles of the federal bill of rights and brought within the Fourteenth Amendment by a process of absorption. These in their origin were effective against the federal government alone. If the Fourteenth Amendment has absorbed them, the process of absorption has had its source in the belief that neither liberty nor justice would exist if they were sacrificed. *Twining v. New Jersey, supra,* p. 99.[228] This is true, for illustration, of freedom of thought and

speech. Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations a pervasive recognition of that truth can be traced in our history, political and legal. So it has come about that the domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, has been enlarged by latter-day judgments to include liberty of the mind as well as liberty of action.[229]

This was the clearest Supreme Court statement prior to 1940 that religious freedom would be protected by the Supreme Court in any clear-cut issue that came before it.

One or two other Federal cases pointing in the same direction followed. There may be noted, for example, the case of *Lovell* v. *City of Griffin* (1938).[230] Here a municipal ordinance forbidding the distribution by hand or otherwise of literature without the written permission of the city manager was held unconstitutional as applied to the distribution of pamphlets and magazines in the nature of religious tracts. The opinion in this case was delivered by Chief Justice Hughes (1862–1948). It had to do with the distribution of certain tracts setting forth the so-called gospel of the "Kingdom of Jehovah." The appellant did not apply for any permit for such distribution, as she regarded herself as sent by Jehovah "to do His work," and that such an application would have been "an act of disobedience to His commandment." She had been convicted of a violation of the city ordinance and sentenced to imprisonment for fifty days in default of payment of a small fine. The contention of the counsel of the appellant was that her sentence, which the court of appeals of the state had refused to review, was illegal, as the ordinance in question was unconstitutional. The following reasons were cited:

Because said ordinance is contrary to and in violation of the first amendment to the Constitution of the United States, which reads:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

Said ordinance is also contrary to and in violation of the fourteenth amendment to the Constitution of the United States, which had the effect of making the said first amendment applicable to the States. . . .

Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press, contrary to the provisions of said quoted amendments.

Said ordinance also prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of literature about petitioner's religion in violation of the terms of said quoted amendments.[231]

The Supreme Court had previously dismissed an appeal based upon the "free exercise of religion" on the ground that there was a want of a substantial Federal question,[232] but had not dealt with the issue of freedom of speech and of the press since it had not previously been properly presented. The court now decided that the ordinance prohibiting the distribution of "circulars, handbooks, advertising, or literature of any kind" was invalid, as it "strikes at the very foundation of the freedom of the press by subjecting it to license and censorship."[233]

It will be noticed that the case was not decided on the clause protecting freedom of religion; but this freedom is guaranteed in the same amendment to the Constitution which was quoted by the court in deciding this case. It said:

> Freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action.[234]

It was again a reasonable inference, as it had been in the 1925 case recently quoted, that freedom of religion, likewise mentioned in the First Amendment, is also "among the fundamental personal rights and liberties" thus protected.

(3) THE SUPREME COURT'S DEFINITIVE ACTION IN 1940 (JEHOVAH'S WITNESSES)

In 1940 the issue of religious-freedom guarantees for the states under the Fourteenth Amendment was squarely faced and settled by the court. It was in a case involving the constitutionality of a Connecticut statute which required the approval of a named public state official before soliciting funds from the general public for "any alleged religious, charitable or philanthropic cause. . . ." The case was raised by Jehovah's Witnesses,[235] some of whose members had been arrested for trying—without the necessary certificate of authorization—to sell the religious literature of their sect in the streets of New Haven, after those approached had consented to hear their descriptive phonograph records. When purchase was declined, they solicited contributions toward the cost of publication. The matter was further complicated by the fact that these records contained severe condemnation of organized religion in general and of Roman Catholicism in particular.

The statute under which the appellants were charged provided that:

> No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of

such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both.[236]

The Court of Common Pleas of New Haven county convicted Newton Cantwell and his two sons, all of whom claimed to be ordained ministers of Jehovah's Witnesses, of violating this statute.[237]

The Witnesses carried the case to the Supreme Court of Errors of Connecticut, which affirmed the conviction of all three on the major issue. The case was then carried before the Supreme Court of the United States, where the appellants pressed their contention that the statute under which their conviction was secured was offensive to the due process clause of the Fourteenth Amendment "because, on its face and as construed and applied, it denied them freedom of speech and prohibited their free exercise of religion."

The Supreme Court unanimously decided that the act in question was unconstitutional as denying religious freedom.

First. We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment.[238] The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. No one would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of the guarantee. It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good

order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited.

The appellants urge that to require them to obtain a certificate as a condition of soliciting support for their views amounts to a prior restraint on the exercise of their religion within the meaning of the Constitution. . . . Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth.[239]

The court makes it perfectly clear that this guaranteed liberty does not imply that under the cloak of religion "persons may, with impunity, commit frauds upon the public," or that religious liberty "connoted the privilege to exhort others to physical attack upon those belonging to another sect," or that "resort to epithets or personal abuse" is protected by the Constitution. Such matters are duly covered by existing laws and statutes. The opinion of the court, delivered by Justice Owen J. Roberts (1875–), draws its argument to a close with an impressive statement:

In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds. There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish.

May 20, 1940, when the Supreme Court handed down this decision, is therefore an important date in American Constitutional history, for on that day the court definitely held that the Fourteenth Amendment is applicable to the religious guarantees of the Bill of Rights, and that consequently the Federal government stood ready to protect through the courts religious freedom in the

states. It is noteworthy that a leading Roman Catholic journal—in spite of the violent attacks made by Jehovah's Witnesses on their communion—supported this decision. This Church knows from experience what it means to be a minority group.

It must be added that the Supreme Court on April 7, 1941, declined to grant certain Jehovah's Witnesses a review of a decision of the Federal Circuit Court of Appeals for the First Circuit which upheld as Constitutional an ordinance of Manchester, New Hampshire, prohibiting the sale on public streets of newspapers, books, pamphlets, or magazines without first obtaining a "badge" from the superintendent of schools. They asserted that they "could not discontinue their God-given work and would not apply for a permit because to do so would have been a violation of God's law."[241]

Furthermore, in another New Hampshire case the Supreme Court sustained the conviction of five Witnesses who had been found guilty of violating a state statute prohibiting a parade or procession on a public street without a special license; and similarly, in a Massachusetts case the court upheld a statute prohibiting selling by children on public streets as applied to children assisting parents in the distribution of religious tracts.[242] These decisions were all evidences of the court's desire to support statutes and regulations designed to approve what might appear to be limitations on religious freedom, as discussed in *Cantwill* v. *Lovell,* in cases where the public interest was involved.

On the other hand, in 1943 the court in *Murdock* v. *Pennsylvania* and other cases apparently altered its position by invalidating similar statutes.[243] The evenly divided court, considering these borderline cases involving the rights of Jehovah's Witnesses, was swinging toward a more liberal attitude in interpreting Constitutional guarantees of religious freedom.

Other sects besides the Witnesses believed to hold extreme views have also had their troubles with officers of the law or with legislatures. We have dealt at length elsewhere with the Christian Scientists, who have on the major issues won their fight for freedom not only of belief but of action.[244]

The most extreme case noticed in the courts lately has to do with one of the Holiness groups. Occasionally their itinerant evangelists in the rural South are said to demonstrate the alleged power of faith (based on the words of Mark 16.17) by carrying around poisonous snakes whose bites, they declare, have no harmful effect on believers. In a recent case in a Georgia county an injunction was granted forbidding the handling of snakes at church services.[245] Those guilty protested on the ground that their Constitutional guarantees of religious freedom were thus impaired.

As we consider this brief layman's survey of the significance of Section 1 of the Fourteenth Amendment, as interpreted in recent years by the Su-

preme Court, we are inclined to think that, next to safeguarding the rights of the Negro and other minority groups, its greatest service will prove to be in protecting religious freedom. The applicability of the "due process" clause in some cases, especially those protecting corporate rights when in apparent opposition to public interests, has in the opinion of some jurists been carried too far, but its contribution to upholding the rights of liberty of conscience has been of vital importance. That the Amendment has the possibility of serious danger from having "due process" so interpreted as to thwart social experiments by the states is recognized. But this danger should be overcome by the growing liberalization of our higher Federal courts, which may generally be trusted to stand as a bulwark of our Constitutional liberties when rightly interpreted, and to subject legislation limiting civil liberties to more exacting judicial scrutiny. Mr. Justice Holmes' statement should also be remembered:

> I do not think the country would come to an end if we [i.e. the Supreme Court] lost our power to declare an act of Congress void. I do think that the United States will be imperilled if we could not make that declaration as to the laws of the several states. . . .[246]

He attributes this belief to the fact that "often a local policy prevails with those who are not trained to national views. . . ."

We have thus far discussed the importance of the first section of the Fourteenth Amendment to the cause of religious freedom in the states. The second section also has potentialities in this matter; in that it is not impossible that, should a state infringe the religious freedom which the Constitution under recent Supreme Court decisions protects in the states, by denying the vote on religious grounds, its basis of representation in Congress might be reduced.

This section reads:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty one years of age in such State.

Strangely enough, I have never seen a reference to this possibility except in a book written in Germany in 1873, explaining to the German people the American system of Church-State relations.[247] It should also be remembered

that under Section 5 of this amendment "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." It is most unlikely that Congress will avail itself of this power in so far as religious freedom is concerned, and it would probably be unwise for it do so under existing conditions; but the provision might conceivably be important.

The history of the applicability of the Fourteenth Amendment to the guarantee of religious freedom in the states is, as we have seen, highly significant. The principal periods may be thus summarized:

(1) Through 1872 there was no evidence that anyone in an important judicial position thought the Amendment could be used to guarantee in the states the religious freedom clause of the Federal Bill of Rights.

(2) In 1873 in the Slaughterhouse case Justice Stephen J. Field (1816–99) began a series of dissenting opinions, taking a broad view of the scope of the Amendment. Justice John M. Harlan (1833–1911) gave him increasingly strong support. But for nearly a quarter of a century, that is through 1896, the majority of the Supreme Court seemed to consider that the Fourteenth Amendment was concerned with slavery and economic rights alone and did not otherwise affect the interpretation of the Bill of Rights.

(3) From 1897 through the 1930's the Supreme Court little by little extended the application of the Fourteenth Amendment to the various freedom clauses of the Bill of Rights, stating in various dicta that religious freedom was included in its scope. The first definite instance of this kind was in 1923.

(4) In 1940 came the clear-cut decision of the Supreme Court in a Jehovah's Witnesses case, where in a unanimous opinion the Fourteenth Amendment was used to extend the guarantees of religious freedom in the Bill of Rights to state cases. This carried practically to completion the process of incorporating the First Amendment into the Fourteenth as far as the guarantees mentioned were concerned.[248]

It will be seen that it took practically three-quarters of a century to bring about this important result.

In this section we have carried the Supreme Court's decisions on religious freedom only far enough to see firmly established the general principle that the Fourteenth Amendment is applicable in state cases. We shall later discuss various applications and developments of this doctrine in more recent cases, especially those involving the flag salute for Jehovah's Witnesses (XVIII, 8) and in education in public [XVIII, 1, (3)] and parochial (XIX, 5) schools. The limits of religious freedom, when it acts against the safety of the State and its legal standards, are also discussed in the Mormon polygamy cases (XVI, 3).

Religious freedom in the sense of liberty of conscience, would now seem, on the basis of the Constitution and its pertinent amendments and the chief

court interpretations of them as outlined in this chapter, to be amply guaranteed, as far as Constitutional provisions can guarantee them. This will be increasingly clear as we study state constitutions and statutes, and the opinions of our Supreme Court in disputed cases. But should the Roman Catholic Church press successfully any of its efforts to secure direct assistance from public taxation for its parochial schools, it is probable that any state law permitting such assistance would be declared unconstitutional by the United States Supreme Court. This, however, would apparently not apply to auxiliary services given pupils in religious or parochial schools in certain cases authorized by the state, and involving free bus service, nonreligious textbooks when also used in the public schools, and certain health aids.

The logic of the situation supports this view, as does the recent majority opinion in the case of *Everson* v. *Board of Education,* which in spite of its strongly expressed views as to the importance of maintaining religious freedom allowed to pass as Constitutional a law of the state of New Jersey permitting under certain circumstances the pupils of nonpublic schools not operated for profit, to be transported free at the expense of the public school district. Justice Black, speaking for the court in this five to four decision, stated that among the things meant by the establishment of religion clause of the First Amendment was that

> No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practise religion.[249]

The minority was equally strong on this point, and opposed the constitutionality of the New Jersey law as tending to break down the separation between Church and State.

Furthermore, there is no likelihood that a Federal Constitutional amendment authorizing a state to make direct grants to any schools of a denominational character could be adopted, although one specifically forbidding such grants failed of passage in 1875;[250] and more recent discussions show that though certain groups are in favor of including denominational schools in Federal appropriations for various educational purposes, other large groups are opposed. On the whole it seems improbable that an amendment favoring such assistance could command the two-thirds vote required in Congress and the three-fourths vote of the state legislatures or conventions. In spite of official pressure there seems to be an increasing group of Roman Catholic laymen who prefer to retain the independence which the Church now has in receiving no direct financial favors from the State.[251] But if it is desired in the interest of Church-State separation to prevent the possibility of any pub-

lic appropriations from tax funds to sectarian institutions, an additional amendment may be desirable to accomplish this purpose.

There is also a bare possibility that proponents (mostly Protestants) or opponents (mostly Roman Catholics, Jews, freethinkers, and some liberals of different faiths) of Bible reading in public school exercises—which generally means reading the King James version—may try to have this matter specifically legalized, or specifically forbidden by a Federal amendment. This is because the Supreme Court has up to the present refused to pass on cases of this character, taking the ground that the requirement of Bible reading or permissive legislation allowing it, in various states, are state and local matters, and that there is no sufficiently clear "Federal issue" involved.[252] Similarly, both Congress and the courts have recognized that all matters regarding church property are matters controlled by state legislation and never come before the Federal judiciary except in interstate, territorial, or insular cases, or in cases where the fundamental guarantees of religious freedom are involved.

Our forefathers and fathers have laid firm Constitutional foundations in the matter of religious freedom and separation of Church and State in the United States. But it is one thing to secure "rights," a very different thing to see that they are preserved inviolate. This is where an alert public opinion is always necessary. "Eternal vigilance" is still the price of liberty. Thomas Paine (1737–1809) was eager to secure the *Rights of Man*, about which he wrote, but Giuseppe Mazzini (1805–72) realized that if these were to be enforced the *Duties of Man* must also be emphasized; and among these duties for a patriotic American is to see that our inherited religious liberty with its closely related separation of Church and State are transmitted unimpaired to future generations.

Section 6. THE DEPARTMENT OF JUSTICE AND THE UNITED STATES CODE

The Civil Rights Section has recently been established in the Criminal Division of the United States Department of Justice to aid in the protection of the civil rights and civil liberties, under the Federal Constitution and laws, of citizens and inhabitants of any state, territory, or district. The section relies mainly for the authoritative basis of its work on certain portions of the United States Code which had their origin in the Enforcement Act of 1870. This code of the laws of the United States was issued in revised form in 1935, and cumulative supplements are published annually. Prepared under the direction of the House of Representatives Committee on the Revision of the Laws, it contains all generally applicable acts of Congress then in force. The code is there-

fore considered to be "prima facie the law." It is arranged under fifty "Titles." Of these the most important for our purposes are two sections of title 18.

[51] If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, . . . they shall be fined not more than $5,000 and imprisoned not more than 10 years, and shall, moreover, be thereafter ineligible to any office or place of honor, profit or trust created by the Constitution or laws of the United States.[253]

[52] Whoever under color of any law, statute, ordinance, regulation, or custom willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both.[254]

The offenses defined in section 52 are: first, the willful subjection of any inhabitant "under color of law" to a deprivation of rights secured by the United States Constitution or laws; second, the willful subjection of any inhabitant "under color of law" to discriminatory pains or punishments on account of race, color, or alien status. The first is important for our purposes, especially as all inhabitants are included, whether citizens or not. The rights protected include: freedom from physical restraint and other forms of assault and battery; freedom of speech and of the press; freedom of religion;[255] freedom to assemble peaceably; to petition the government; to pursue a lawful calling; to acquire and use knowledge; and to establish a home.

An official of the Department of Justice states that the second section quoted "is aimed primarily at breach of constitutional guarantees against governmental action found in the first eight and in the Fourteenth Amendments."[256]

Up to the end of 1947 the religious-freedom issue has been raised in only one case under this statute, *United States* v. *Catlette et al.* (1942); and here other liberties were also involved. A release[257] from the Department of Justice states that in this case a jury in the United States District Court for the southern district of West Virginia, sitting at Charleston, returned a verdict of guilty against two law enforcement officers of Richwood, West Virginia, Martin Louis Catlette, deputy sheriff for Nicholas county, and Bert Stewart, chief of police for the town of Richwood.

The government charged that on June 29, 1940, the defendants wrongfully detained nine members of a band of Jehovah's Witnesses in an office in the Richwood City Hall. Four of the group were forced to drink from eight to sixteen ounces of castor oil each, and were kept tied with ropes from 10 o'clock

in the morning until 4 in the afternoon. Thereafter, the entire group was marched through the town to the corporate limits and set free. They were threatened with shooting if they returned. The government further charged that the defendants not only participated actively in the misconduct but also refused to grant equal protection under the law to the victims. Conviction was asked under Section 52 of Title 18, United States Code quoted above.

The verdict of guilty was later sustained by the United States Circuit Court of Appeals, Fourth Circuit, in an able opinion, of which for our purposes the most significant paragraphs are these:[257]

We are here concerned only with protecting the rights of these victims, no matter how locally unpalatable they may be as a result of their seeming fanaticism. These rights include those of free speech, freedom of religion, immunity from illegal restraint, and equal protection, all of which are guaranteed by the Fourteenth Amendment. . . . It is quite obvious in the instant case that Catlette took very active and utterly unwarranted steps to subject his victims to affirmative indignities. It is equally clear that these indignities were inflicted on the victims solely by reason of their membership in the religious sect known as Jehovah's Witnesses, and their practices founded on their beliefs, particularly their refusal, on religious grounds, to salute the flag of the United States. This, we think, brings Catlette within the prohibitions of the federal Constitution and the federal criminal statutes. . . . The judgment of the District Court is affirmed.[258]

Attention was called by the court to the fact that the members of Jehovah's Witnesses who were maltreated had come to the town of Richwood for three purposes: to distribute the literature of their sect; to seek converts; and to secure signatures to a petition to the governor of Ohio protesting against the action of the Ohio State Fair Association in cancelling a contract for the use of the state fair grounds at Columbus for a national convention of their sect or organization.

The action of the two Federal courts in this case is highly significant, and it is not improbable that Section 52 of the United States Code, backed by the recently established Civil Rights Section of the Criminal Division of the Department of Justice and the decision in the Catlette case, may be landmarks in the protection of religious freedom in this country. In a memorandum from the Chief of the Civil Rights Section of the Department of Justice to all United States attorneys dated May 4, 1942, occurs this statement.

It is pointed out that prosecutive action against such public officials who wilfully interfere with constitutional guarantees may be had under Section 52, Title 18, United States Code. See Circular No. 3356, Supplement No. 2. However, as I understand it, it is not the desire of the Department to institute numerous prosecutions against over zealous public officials who have deprived others of their religious freedom, although

it is the duty of the Department to protect that freedom as well as all other constitutionally secured rights. This duty becomes more imperative, albeit more difficult, in time of war.

When the United States Attorneys are advised that local authorities are subjecting religious groups to treatment which might amount to a violation of Section 52, they should take steps to secure the cooperation of such state and local officials involved through personal conferences or by letter, to the end that official vigilantism violative of freedom of worship may be avoided.[259]

The Department of Justice informed the writer in 1947 that it has had only occasional complaints regarding religious freedom since the decision of the Catlette case and that it has handled no prosecutions since that time.

Further action of the Civil Rights Section in protecting religious freedom will be considered later in discussion of the flag salute cases.[260]

Section 7. THE PRESIDENT'S COMMITTEE ON FAIR EMPLOYMENT PRACTICE

During World War II many complaints were received of discrimination against various racial and religious groups. Most of these had to do with the difficulty of Negroes in securing positions in industry for which they seemed qualified, but cases involving Jews were also frequently brought to public attention. As a result the president established the so-called Committee on Fair Employment Practice, of which Monsignor Francis J. Haas was for some time the chairman.

This committee originated in 1941, on June 12. The president sent a memorandum to the Office of Production Management in which he said that

> Our government cannot countenance continued discrimination against American citizens in defense production. Industry must take the initiative in opening the doors of employment to all loyal and qualified workers regardless of race, national origin, religion or color. . . .

This was followed on June 25 by an executive order reading in part as follows:

> 1. All departments and agencies of the government of the United States concerned with vocational and training programs for defense production shall take special measures appropriate to assure that such programs are administered without discrimination because of race, creed, color, or national origin;
>
> 2. All contracting agencies of the government of the United States shall include in all defense contracts hereafter negotiated by them a provision obligating the contractor not to discriminate against any worker because of race, creed, color, or national origin.[261]

According to an early report approximately 10 per cent of the complaints received by the committee concerned discrimination against persons because of creed. The committee reported, for instance, that exceptionally well qualified chemists and engineers were excluded from war plants because of their Jewish faith.

The methods employed for discriminating against Jews were somewhat similar to those used for discriminating against Negroes. They had to do largely with defense training and with the advertising by certain companies in seeking employees and specifying "Gentiles Only." Furthermore, application blanks in which religion must be stated encouraged discrimination, especially in the northeast section of the country.[262] There were also many cases where orthodox Jews and other Sabbatarians created special problems in war industries. The cases of Jehovah's Witnesses and certain other groups were also taken up by the committee.

The committee understood that its responsibility was limited to the redress of grievances "involving discrimination in employment based on race, creed, color or national origin." It is with the second of these that we are here concerned. The committee held that the requirement of disclosure of an applicant's religion, as indeed also of his race, is contrary to the intent of Executive Order 8802, when imposed prior to employment. It secured the co-operation of the war-contracting agencies of the government, namely, the War and Navy Departments and the Maritime Commission, which agreed to inform contractors that "any reference to race or religion should be deleted from employment forms if such exist."

In the War Department a medium of understanding between the committee and the provost marshal general was issued March 10, 1943, part of which declared:

> The Provost Marshal General agrees to write into each contract with each commercial agency making loyalty investigations pursuant to contract with the War Department an agreement on the part of such agency that without the written permission of the President's Committee on Fair Employment Practice such agency shall not divulge to anyone save the Provost Marshal General, or his duly authorized representative, any information regarding race, creed, color or national origin developed pursuant to investigations made under the contract.[263]

The chief of the compliance division kindly supplied the author with the above facts. Sufficient information is available to make it seem clear that at least during the War the committee, for some time under the effective leadership of Monsignor Haas, was of help in preventing discrimination because of religious affiliations, particularly in the case of Jews, but also in certain other areas where there is some prejudice, such as where there was a large migra-

tion of Latin Americans, the great majority of whom, on arrival in this country, belong to the Roman Catholic Church.

The Fair Employment Practice Committee ceased to exist in 1946 owing to the failure of the Congress to provide funds for its continuance. In its *Final Report* to the president it gave a summary of its actions in cases involving religious discrimination. This showed that 8 per cent of its docket involved complaints of discrimination because of creed, and that of these 70 per cent were Jewish. The most general allegation on the part of Jews was refusal on the part of certain employers to employ other than Gentiles. The committee was particularly successful in getting firms to give up the discriminatory advertisements calling "for Gentiles only." Other cases of discrimination included Seventh Day Adventist appeals where members were discharged because they would not adhere to a routine work schedule on Saturday, their Sabbath. In many cases the FEPC was able to persuade employers to rearrange work schedules to fit religious requirements. There were also cases involving Jehovah's Witnesses and some other groups.[264]

Although the Federal FEPC has gone out of existence, effective state bodies of similar character have been established in New York and elsewhere.

Section 8. SUMMARY

As we review the Constitutional and legal bases of Church-State separation and the resulting religious freedom outlined in the seven preceding sections, we must remember that the foundations were laid in the original provision of the Constitution forbidding religious tests for office; "No religious Test shall ever be required as a Qualification to any Office or public Trust under the United States" (Art. VI, 3).[265] It is not impossible, in view of the Supreme Court's interpretation of the Fourteenth Amendment, that this clause might be applicable not only to regular government officeholders but to certain school cases, as when a parochial school is taken over by local public authority, and continues to employ only Catholic teachers.[266] This might be considered to infringe this Constitutional provision.

Complete separation of Church and State may be said to have been aided, though not guaranteed, by two other provisions of the original Constitution: that in which "The United States shall guarantee to every State in this Union a Republican Form of Government" (Art. V, 4) inasmuch as an Established Church seems both inconsistent and unlikely in a republic; and the provision regarding the privileges of citizenship—"The Citizens of each State shall be entitled to all Privileges and immunities of citizens in the several States" (Art. IV, 2). I have never seen this last clause, which is practically involved in the

freedom and immunities clause of the Fourteenth Amendment, referred to in this connection, but to a layman it seems not impossible that it might be considered to apply to all the states the principle of Church–State separation, so dear to Jefferson and Madison, partly anticipated in Article VI, 3, quoted above, and adopted already in several states such as Rhode Island, Virginia, and Pennsylvania.[267] It might be considered as in some ways an anticipation of Amendment XIV, 1, or as analogous to "the favored nation clause" in treaties, the thirteen original states being in existence when the Constitution was adopted.

The dictionary definitions of the word "several" as an adjective throw little light on the subject, as they include such varied meanings as "separate," "particular," "different," "various," "diverse," and in law "separable and capable of being treated as separate from, though it may be not wholly independent of, another."[268] It is noticeable that unanimity is not a requirement.

But this "wall of separation"[269] with its attendant religious freedom needed to be made more definite, hence the specific opening words of the First Amendment, the cornerstone of our Bill of Rights, and based on the spirit and ideals of the Declaration of Independence[270]—"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof";[271] a provision which the Supreme Court's interpretation of Amendment XIV, under its recognized power to interpret the Constitution, has made applicable to all the states.[272]

The authorized judicial procedure of the Federal government and the special agencies it has set up to protect various freedoms, including that of religion, are all based on powers which spring from the Constitution and its amendments.

Chapter IX

THE RESULTS OF THE REVOLUTION AND CONSTITUTIONAL DISCUSSIONS ON THE STATUS OF RELIGION IN THE NATION

We have examined in the previous chapter the Federal Constitution and its amendments that bear directly on religious freedom. Attention has been called to the fact that these Constitutional provisions—especially those prior to the Fourteenth Amendment—still left open most matters for the individual states to adjust in their relationship to the Churches, more particularly in the field of religious education and matters affecting church property.

All the original thirteen states, with the exception of Massachusetts, Rhode Island, and Connecticut, had drafted new constitutions of their own liking by 1777—a year after the Declaration of Independence, and twelve years before the confederation had passed into the republic under its new Federal Constitution. Massachusetts followed suit in 1780. These actions were in accordance with the resolution of the Continental Congress, passed in May, 1776, urging the colonies to form new governments "such as shall best conduce to the happiness and safety of their constituents."[1]

It is now necessary to study the organization of the states after the Declaration of Independence, both before and after the adoption of the Federal Constitution. We need to see what provisions these now self-governing former colonies, having thrown off all European allegiance, put in their constitutions regarding religious freedom, and what laws were adopted which facilitated the establishment of voluntary religious bodies.

This is a matter of some importance, for it was in the state conventions and legislatures prior to the adoption of the Federal Constitution and its Bill of Rights[2] that the earliest constitutions were voted, and the real battle for religious liberty fought out and in some cases won. Father Thorning, in his interesting dissertation on the development of religious liberty in the transition period in New England, has shown in an impressive way the very gradual removal of old Constitutional limitations on religious liberty by the states of Massachusetts, Connecticut, Rhode Island, and New Hampshire.

In general it may be said that in New England Church-State relations were at first not materially altered. It was not until 1817 that Connecticut threw off

her old alliance with Congregationalism, and Massachusetts was even slower —1833. It is true, however, that a more liberal tendency was noticed after the Revolution.

In the middle states, where the population was more heterogeneous and people were accustomed to a considerable degree of religious freedom, the states did not attain to complete neutrality in religious matters for several decades.

In the South the Church of England, transformed into the Protestant Episcopal Church of the United States, soon lost its privileged status, but with the exception of Virginia, where Jefferson and his colleagues had accomplished such an important victory for entire religious freedom, the Church was still a matter of state concern.[3] These developments have been considered state by state in a previous chapter.[4]

Section 1. THE INSISTENCE BY SOME STATES ON A FEDERAL BILL OF RIGHTS WITH RELIGIOUS-FREEDOM GUARANTEES

The adoption of the Federal Constitution did not in and of itself abolish the various religious restrictions and provisions legally in force in the different states.

Each state was free to do as it wished in regard to liberty of worship, church establishment, taxation of property used for religious purposes, religious tests, State officers —as distinct from members of Congress covered by the Federal Constitution. The states carried over into their future statehood the special institutions in force in 1789, and "used their own time and method" in making such changes as they desired.[5]

The founders of our government were interested both in securing religious liberty, and in trying to protect the Christian religion in general and their own denominations in particular. They feared the effects of a godless government; and in leaving the matter of religion to the states, as being one of their "reserved" powers not assigned to the Congress and later covered by Amendment X, they doubtless believed that both friction among the states could be avoided and the advantages of religion maintained.

The Constitution, as drafted and approved by the Constitutional Convention, had to be submitted to the various states for their approval. And, as was natural under the circumstances, the interest in Constitutional religious issues proved very much greater in the state conventions than in the Federal discussions. The first state to act was Delaware, which unanimously approved the document on December 7, 1787. Pennsylvania followed five days later by a vote of 46 to 23. Then came two unanimous decisions, New Jersey and Georgia;

and the other states came in in turn—Connecticut, Massachusetts, Maryland, South Carolina, and New Hampshire, thus making the necessary nine, to be followed as we shall see by all the others.[6]

In most of the state conventions there was much discussion both on the clause that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States," and on the absence of any further guarantee of religious liberty.

Elliot's *Debates*[7] enables the historian to study the discussions in the various state conventions as well as the most important published statements made by participants in the Federal Constitutional Convention. These are important for understanding the background out of which the religious freedom amendment developed. They fill five volumes, so it is possible here to give only a few high lights. We notice in studying the debates, and especially those in North Carolina,[8] Massachusetts,[9] and Virginia,[10] that the state debaters were of three main groups: those who favored the clause in the Constitution to the effect that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States" and thought it adequate; those who opposed this clause as superfluous, or dangerous to the cause of religion; and those who accepted it but wished it supplemented. It seems well to make a few general remarks on each of these groups, before telling of some of the debates in detail.

The first group felt that history showed the grave danger of religious tests leading to persecution; that the Federal government should have no right to interfere with the states in this matter; that Christ never called for support for His religion by worldly authority; that the people of this country might be relied upon not to entrust government to irreligious people; that the only way to produce national political unity was to leave religion "free and unshackled"; that permitting a variety of sects encouraged religious freedom and prevented any State Church; that to require a religious test would exclude some well-qualified citizens from holding office; that likewise such a test would not prevent some unscrupulous men entering public life; that St. Peter's statement that "God is no respecter of persons" is applicable in this case; that religion is exclusively a matter between God and the individual and not subject in any way to State approval; that the high state of intelligence and liberty in the country made further guarantees of religious liberty unnecessary, especially as the Constitution gave no power to Congress to intervene in religious matters.

The second group was represented by those who feared that they might be deprived under the Constitution of the privilege of worshiping God according to their consciences; that the treaty-making power of the Senate might result in a treaty or treaties making the Roman Catholic religion compulsory;

that the pope might be elected president; that "Popish priests" might not be excluded from officeholding; that unbelievers or Mohammedans might be elected to office; that the oath of office might be sworn merely by Jupiter or by Minerva; that as the Constitution did not guarantee that officeholders be men believing in God or in Christ, it was dangerous.

The third group was represented by those who wished that a bill of rights should be added specifically guaranteeing, among other things, religious liberty and Church–State separation; that an amendment should make clear that all matters such as religion and church membership, not expressly enumerated as delegated by the Constitution, are retained by the states; that the rights of conscientious religious objectors in bearing arms be recognized; that the omission of the name of the Deity in the Constitution was regrettable and should be remedied.

The opinions of four important participants in the Federal Constitutional Convention, expressed when ratification was being considered by the several states—namely Martin of Maryland, Ellsworth of Connecticut and Madison and Randolph of Virginia, have already been considered.[11] Here we are concerned with the debates and their results in several other state legislatures and conventions, and with related contemporary actions.

The good sense of the majority of delegates in most states favored the omission of religious tests. As an example of this let me refer to the speech, already quoted, of the Reverend Isaac Backus (1724–1806),[12] a well-known Baptist divine, opposing Major Lusk in the Massachusetts convention of 1788. Backus took the ground that religious tests interfered with Christian prerogatives, as religion was exclusively a matter "between God and individuals."[13] The debate in this convention is so illuminating as to deserve consideration at some length. Some Baptists voted against ratification because of the lack of a specific clause guaranteeing religious freedom. Among the arguments those of the Reverend Daniel Shute (1722–1802) of Hingham, a Baptist, and of the Reverend Phillips Payson (1736–1801) of Chelsea, a Congregationalist, seem of sufficient historic and present-day interest to be quoted from at some length. Mr. Shute said:

> Mr. President—To object to the latter part of the paragraph under consideration, which excludes a religious test, is, I am sensible, very popular; for the most of men, some how, are rigidly tenacious of their own sentiments in religion, and disposed to impose them upon others as the *standard* of truth. If in my sentiments, upon the point in view, I should differ from some in this honourable body, I only wish from them the exercise of that candour, with which true religion is adapted to inspire the honest and well-disposed mind.
>
> To establish a religious test as a qualification for offices in the proposed Federal

Constitution, appears to me, sir, would be attended with injurious consequences to some individuals, and with no advantage to the *whole*.

By the injurious consequences to individuals, I mean, that some, who in every other respect, are qualified to fill some important post in government, will be excluded by their not being able to stand the religious test—which I take to be a privation of part of their civil rights.

Nor is there to me any conceivable advantage, sir, that would result to the *whole* from such a test. Unprincipled and dishonest men will not hesitate to subscribe to *anything*, that may open the way for their advancement, and put them into a situation the better to execute their base and iniquitous designs. Honest men alone, therefore, however well qualified to serve the publick, would be excluded by it, and their country be deprived of the benefit of their abilities.

In this great and extensive empire, there is and will be a great variety of sentiments in religion among its inhabitants. Upon the plan of a religious test, the question I think must be, who shall be excluded from national trusts? Whatever answer bigotry may suggest, the dictates of candour and equity, I conceive, will be *none*.

Far from limiting my charity and confidence to men of my own denomination in religion, I suppose, and I believe, sir, that there are worthy characters among men of every other denomination—among the Quakers—the Baptists—the Church of England—the Papists—and even among those who have no other guide, in the way to virtue and heaven, than the dictates of natural religion.

I must therefore think, sir, that the proposed plan of government, in this particular, is wisely constructed: That as all have an equal claim to the blessings of the government under which they live, and which they support, so none should be excluded from them for being of any particular denomination in religion.

The presumption is, that the eyes of the people will be upon the faithful in the land, and from a regard to their own safety, will chuse for their rulers, men of known abilities—of known probity—of good moral characters. The apostle Peter tells us, that God is no respecter of persons, but in every nation he that feareth him and worketh righteousness, is *acceptable* to him—And I know of no reason, why men of such a character, in a community, of whatever denomination in religion, *cæteris paribus*, with other suitable qualifications, should not be *acceptable* to the people, and why they may not be employed, by them, with safety and advantage in the important offices of government.—The exclusion of a religious test in the proposed Constitution, therefore, clearly appears to me, sir, to be in favour of its adoption.[11]

The Reverend Mr. Payson's views were not dissimilar:

Mr. President—After what has been observed, relating to a religious test by gentlemen of acknowledged abilities, I did not expect it would again be mentioned, as an objection to the proposed Constitution, that such a test was not required as a qualification for office. Such were the abilities and integrity of the gentlemen who constructed the Constitution, as not to admit of the presumption that they would have betrayed so much vanity as to attempt to erect bulwarks and barriers to the throne of God. Relying

on the candour of this Convention, I shall take the liberty to express my sentiments on the nature of a religious test, and shall endeavour to do it in such propositions as will meet the approbation of every mind.

The great object of religion being God supreme, and the seat of religion in man being the heart or conscience, *i.e.* the reason God has given us, employed on our moral actions, in their most important consequences, as related to the tribunal of God, hence I infer, that God alone is the God of the conscience, and consequently, attempts to erect human tribunals for the consciences of men, are impious encroachments upon the prerogatives of God. Upon these principles had there been a religious test, as a qualification for office, it would, in my opinion, have been a great blemish to the instrument.[15]

Theophilus Parsons (1750–1813), a Congregationalist, and afterward Chief Justice of the Supreme Court of the state, speaking on January 23, 1788, said:

It has been objected, that the Constitution provides no religious test by oath, and we may have in power unprincipled men, atheists and pagans. No man can wish more ardently than I do, that all our publick offices may be filled by men who fear God and hate wickedness; but it must remain with the electors to give the government this security—an oath will not do it: Will an unprincipled man be entangled by an oath? Will an atheist or a pagan dread the vengeance of the christian's God, a being in his opinion the creature of fancy and credulity? It is a solecism in expression. No man is so illiberal as to wish the confining places of honour or profit to any one sect of christians: But what security is it to government, that every publick officer shall swear that he is a christian? For what will then be called christianity? One man will declare that the christian religion is only an illumination of natural religion, and that he is a christian; another christian will assert, that all men must be happy hereafter in spite of themselves; a third christian reverses the image, and declares, that let a man do all he can, he will certainly be punished in another world; and a fourth will tell us, that if a man use any force for the common defence, he violates every principle of christianity. Sir, the only evidence we can have of the sincerity and excellency of a man's religion, is a good life—and I trust that such evidence will be required of every candidate by every elector. That man who acts an honest part to his neighbour, will most probably conduct honourably towards the publick.[16]

The convention finally ratified the Constitution by the close vote of 187 to 168.

The account of the Massachusetts ratification of the Federal Constitution reminds us of the debate nearly a decade earlier over the state constitution, which elicited an important letter on religious freedom from Benjamin Franklin, then in Paris.

It gives me great pleasure to learn, that your new constitution [i.e. that of Massachusetts] is at length settled with so great a degree of unanimity and general satisfaction. It seems to me upon the whole an excellent one; and that if there are some par-

ticulars, that one might have wished a little different, they are such as could not in the present state of things have been well obtained otherwise than they are, and, if by experience found inconvenient, will probably be changed hereafter. I would only mention at present one article, that of maintenance for the clergy. It seems to me, that, by the constitution, the Quakers may be obliged to pay the tax for that purpose. But, as the great end in imposing it is professedly the promotion of piety, religion, and morality, and those people have found means of securing that end among themselves without a regular clergy, and their teachers are not allowed to receive money; I should think it not right to tax them, and give the money to the teacher of the parish; but I imagine, that, in the laws to be made for levying parish taxes, this matter may be regulated to their contentment. . . .[17]

Closely related to the matter of religious tests was the omission of the name of the Deity in the Federal Constitution. Regret was particularly strong in New England. For instance, the General Association of the Congregational Churches in Connecticut received in 1788 a request from the Association of Wyndham County requesting

that some suitable Testimony might be borne against a sinful omission in the late Federal Constitution, in not looking to God for direction, and of omitting the mention of the name of God in the Constitution they proposed to the people for their approbation.[18]

Somewhat similar action was taken by two of the smaller Presbyterian groups in Virginia.

Statements of regret as to the absence of any direct recognition of the Christian religion have also been found in the debates of the conventions called to ratify the Constitution in five states—Virginia, Massachusetts, Pennsylvania, North Carolina, and Maryland.

In the final analysis good sense prevailed. On the proposal not to permit any religious test and the much-debated related matter of requiring an oath or affirmation, no serious difficulty developed as far as ratifying the Constitution was concerned.

On the other matter, that of the omission of any guarantee of religious freedom, there was much more serious difficulty, and the omission might well have shipwrecked the Constitution had it not been for the assurance of Washington and other leaders that a bill of rights would be approved by the Congress of the United States when it first met. Indeed, five of the thirteen states definitely urged or suggested, in ratifying the Constitution, an amendment to this effect;[19] and in Pennsylvania, which ratified the Constitution December 12, 1787, by a majority of 15, without any specific recommendation regarding religious freedom, the minority issued a strong address entitled "Reasons of Dissent." In this various amendments were proposed, including the following:

The right of conscience shall be held inviolable, and neither the legislative, executive, nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the constitutions of the several States, which provide for the preservation of liberty in matters of religion.[20]

Let us now take up some other significant state actions in turn.

The case of New Hampshire is specially important. It was the ninth state to ratify, June 21, 1788, and this action completed the requisite number of states favoring ratification for inaugurating the government on the basis of the new Constitution. New Hampshire proposed twelve amendments, of which the eleventh had historic significance—"Congress shall make no laws touching religion, or to infringe the rights of conscience." This was proposed by a committee of which Samuel Livermore (1732–1803) was chairman, and, as we have seen, it was he who was to propose the basis of the religious-freedom motion in the First Congress.[21]

The Virginia convention met June 22, 1788. In it occurred the most memorable debates on the subject of the necessity of a bill of rights. These had been preceded by certain important actions. For instance, the General Committee of the Baptists, meeting six weeks earlier, May 7, resolved that the new Federal Constitution did not make "sufficient provision for the secure enjoyment of religious liberty."[22] Elder John Leland (1754–1841),[23] who had been an ardent advocate of religious liberty, was nominated as a delegate to the Virginia convention from Orange county, but withdrew in favor of James Madison (1751–1836), who had been the consistent champion not only of the Baptists but of other dissenting churches who wished to have their rights safeguarded. Some of the smaller religious bodies, such as the Associate Presbyterian Church and the Associated Reformed Church, agreed to abstain from all voting until the Federal Constitution was amended so as to acknowledge the sovereignty of God and the subserviency of the state to Christ's kingdom.[24] The climax of the convention came in the debate between James Madison, supporting the Constitution, and Patrick Henry (1736–99), who opposed its ratification without an amendment guaranteeing religious freedom. Madison took the ground that there was no specific power in the Federal government to infringe upon religious liberty, which was safe in the hands of the state. Patrick Henry replied with the effective speech referred to where we discussed his contribution to religious freedom.[25]

Edmund Randolph (1753–1813) also engaged in the debate, taking his well-known position that the variety of sects in the United States would prevent the establishment of any one to the prejudice of others, and would forever prevent any attempts to infringe religious liberty. Henry was again in the fray, demanding that it be guaranteed. Randolph answered in the spirit of Madison:

Will he not be contented with the answer that has been frequently given to that objection? . . . No part of the Constitution, even if strictly construed, will justify a conclusion that the general government can take away or impair the freedom of religion.[26]

Madison's theory was of course the well-known one that, as no power had been expressly given the Congress to legislate concerning religion, the power did not exist in the Federal government. This power as well as that of dealing with religious freedom were in his judgment safely left to the states.

After brief debate Virginia ratified the Constitution on June 26. The convention recommended, however, among other amendments, one which is substantially a repetition, somewhat strengthened, of a clause in the Bill of Rights adopted by the colony just prior to the Declaration of Independence:

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by law in preference to others.[27]

This clause, with its emphasis on complete religious freedom and not mere toleration, and its advocacy of Church–State separation, was to prove of special significance for the Federal Bill of Rights.[28]

The convention of New York, meeting June 17 to July 26, 1788, adopted the Constitution by a small majority—3 votes—but with certain recommendations, including one to the effect

That the people have an equal, natural, and unalienable right freely and peaceably to exercise their religion, according to the dictates of conscience; and that no religious sect or society ought to be favored or established by law in preference of others.[29]

The North Carolina convention met July 21–30, 1788. It was insistent that a guarantee of religious freedom should be added to the Federal Constitution. Among the leaders in this movement was the Reverend Henry Abbot (d. 1791), a Baptist minister who had been a member of both conventions at Halifax in 1776. He was a strong opponent of any form of establishment, to whom tradition assigns the authorship of the religious-liberty guarantee of the North Carolina Declaration of Rights.[30] Another leader was General William Lenoir (1761–1839), a much-respected Revolutionary patriot.[31] This was a very characteristic combination of forces urging a religious-freedom guarantee. There was much debate over the ratification of the Constitution, due largely to the absence of such a guarantee. Some feared that Congress, with its treaty-making power, might agree with the papacy to adopt the Roman Catholic religion; some feared that "pagans" might be elected Senators and Representatives;

others that men might take oaths merely "by Jupiter," or "by Minerva"! To these arguments James Iredell (1755–91), later a justice of the United States Supreme Court, who opposed the evils of religious persecution and believed in religious liberty, replied that Congress wished to establish general religious liberty but had no authority to interfere in the state. General Samuel Johnston (1733–1816) said, according to Weeks's "Summary":

A Jew, a Mahometan or a pagan could get office only in one of two ways: either the American people would have to lay aside the Christian religion altogether, or such persons would have to acquire confidence and esteem by good conduct and the practice of virtue.[32]

—Surely a discerning remark. Equally true was the statement of another layman, William Lancaster. He was strong for religious liberty.

But let us remember that we form a government for millions not yet in existence. I have not the art of divination. In the course of four or five hundred years I do not know how it will work. This is most certain, that Papists may occupy that chair, and Mahometans may take it. I see nothing against it.[33]

General Lenoir criticized the proposed Constitution because it contained "no provision against the infringement of the rights of conscience; that ecclesiastical courts might be established which would be destructive to our citizens,"[34] and so on.

There was, on the other hand, some discussion of the failure of the Constitutional Convention to require a test for office that would assure the maintenance of the Christian tradition. The Reverend Dr. David Caldwell (1725–1824), for instance, the leading Presbyterian minister in the state, took the ground that the absence of a religious test for office might attract Jews and pagans of all kinds, who might endanger the character of the country.

After much discussion the state convention resolved "Neither to ratify nor to reject the Constitution" (it acted affirmatively in November), but voted

That a declaration of rights, asserting and securing from encroachment the great principles of civil and religious liberty, and the unalienable rights of the people . . . ought to be laid before Congress and the convention of the States that shall or may be called for the purpose of amending the said Constitution. . . .[35]

This declaration included an assertion of "an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience. . . ."[36]

Rhode Island was the last to ratify—May 29, 1790—but only with a declaration of principles of which the fourth is practically verbatim the same as that

adopted in Virginia.[37] The convention did not, however, recommend any specific amendment dealing with religious liberty.

Assertions and implications in state constitutions favoring the cause of religion and not merely religious freedom will be discussed later.[38]

It may be well to bring together here different types of amendments involving religion formally proposed by the various state conventions when acting on the Constitution of 1787. These actions were all taken in 1788, and in the following order.

South Carolina:

Resolved, That the third section of the sixth article ought to be amended, by inserting the word "other," between the words "no" and "religious."[39]

This was apparently to imply that the "oath or affirmation" required in the previous sentence was really of a religious character.

New Hampshire:

Eleventh. Congress shall make no laws touching religion, or to infringe the rights of conscience.[40]

Virginia:

... *Nineteenth.* That any person religiously scrupulous of bearing arms, ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead. *Twentieth.* That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by law in preference to others.[41]

New York:

That the people have an equal, natural and unalienable right, freely and peaceably to exercise their religion, according to the dictates of conscience; and that no religious sect or society ought to be favored or established by law in preference of others.[42]

North Carolina:

Resolved, That a declaration of rights, asserting and securing from encroachment the great principles of civil and religious liberty, and the unalienable rights of the people, together with amendments to the most ambiguous and exceptionable parts of the said constitution of government, ought to be laid before Congress, and the convention of the states that shall or may be called for the purpose of amending the said constitution, for their consideration, previous to the ratification of the constitution aforesaid, on the part of the state of North Carolina.[43]

19th. That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead.

20th. That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right, to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by law in preference to others.[44]

The effect of these actions on the Federal Bill of Rights with its religious freedom guarantees is discussed elsewhere.[45]

Sufficient has been said to show how seriously the leaders of public opinion in the period of the framing of the Constitution took the question of the guarantees of religious freedom. Speaking generally, delegates to state constitutional conventions, who were fairly representative of intelligent contemporary public opinion, took one of three views as outlined at the beginning of this section, which may now be summarized in slightly different form:

(1) Most thought the provisions in the Federal Constitution suitable and adequate.

(2) There were others, almost equally numerous, who felt that the guarantees did not go far enough and who wished to have them extended so as to cover the points later incorporated in the first section of the Bill of Rights.

(3) There were those who felt that it was dangerous to guarantee religious freedom, believing that it would interfere with Church establishments in the states which had them. These were in general strong Protestants who feared the possible influence of the Church of Rome on the one hand and of infidelity on the other. They regretted that the Constitution had not shown more definitely the inherited Christian point of view of the Reformation. This was the smallest of the three groups.

Public opinion within a decade or so became firmly convinced that the Constitutional provisions were wise. Even so conservative an old-time supporter of the connection of Church and State in Connecticut as President Dwight of Yale had come around in 1813 to a more modern belief. In December of that year he discussed "Ought Religious Tests to be required of Civil Officers." He decided that such tests would not "on the whole" be beneficial, and that in reality they would not exclude infidels from office.

Probably the solution reached was, all things considered, the best, namely, that the Constitution, with its guarantee against religious tests for Federal offices, should be ratified; that further guarantees of religious freedom should be incorporated in the Bill of Rights, as was demanded by several states[47] and was promptly done; and that little by little these guarantees, originally intended to cover only Federal cases, should be extended to include the whole nation. This

has been actually accomplished—partly by state constitutional action, partly by the Fourteenth Amendment and its interpretation by the Federal courts.

Section 2. THE RELIGIOUS-FREEDOM GUARANTEE OF NEW STATES ADMITTED BY CONGRESS

As a result of the adoption of the Federal Constitution and of its Bill of Rights, the attitude of the Federal government on the subject of religious freedom was clear. Article VI of the Constitution stated that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." The word "under" is to be emphasized here, and its difference from "in" noted. The courts, until some time after the Fourteenth Amendment was adopted, interpreted the clause outlawing religious tests as referring only to "every one under the jurisdiction of the United States"[48]—not citizens of a state in their capacity as such.

Similarly, the First Amendment stating that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" was not in the early decades of the republic interpreted as including the states in its scope. Yet, as a matter of fact, the tradition of Church and State separation and of entire religious freedom, as shown in the debates on these subjects in the formation of our state and national governments, was so strong that after the necessary adjustments from colonies to states had been made, the spirit of the provisions of the Virginia bill for religious freedom and of the similar clauses of the Federal Constitution and its Bill of Rights were, with a few exceptions,[49] in force in all the states.[50]

We have dealt with the Constitutional progress of religious freedom in all of the thirteen original states, as well as Vermont, Kentucky, and Tennessee—the other states admitted in the eighteenth century—showing how under the stimulus of independence they broke their ties with established or favored churches and developed the American system of religious impartiality.[51] In the case of Vermont and Kentucky this was specially significant, for as the Supreme Court has pointed out, the Congress made no condition on this subject.[52]

The scope of these volumes does not make it possible to consider the history of the subject in each of the remaining thirty-two states. The student interested is advised to turn to the index in volume VII of Professor Francis Newton Thorpe's (1857–1926) *The Federal and State Constitutions* . . . and look up the entries under "Religious Liberty," "Religious Tests," and "Freedom of Conscience." These are not entirely exhaustive, but cover all the more important facts up to 1909. For the later period he may consult the study of state con-

stitutions prepared for the New York Constitutional Convention of 1938 entitled *Constitutions of the States and United States,* while an appendix to these volumes gives the Constitutional basis for religious freedom in each of our forty-eight states.

We must, however, deal here with the requirements made by Congress in representative cases, after the republic was well established, to insure religious freedom in the new states which it created from the public domain secured by treaty from various foreign powers. In early days each of the original states was permitted to carry over or modify its own laws with such provisions regarding freedom of conscience and religion and its establishment as it might desire. But when new states wished to be admitted to the union their constitutions had to be subject to the approval of Congress, and Congress after the beginning of the nineteenth century required that states have adequate guarantees of religious freedom.

Ohio—1802. The case of Ohio, the first state admitted in the nineteenth century, is particularly significant. The Ordinance of 1787 for the government of the Northwest Territory[53] is rightly regarded as one of the fundamental documents in the history of American religious freedom. This was partly because its guarantees in this and many other respects were taken as precedents in drafting legislation for other areas, and partly because it insured religious liberty in all the states later carved out of the original Northwest Territory. These included Ohio, Illinois, Indiana, Michigan, Wisconsin, and much of Minnesota —that is, the region east of the Mississippi and north of the Ohio Rivers.

When Congress passed in 1802 the enabling act authorizing the admission of Ohio as a state it was with the specific understanding that its "constitution and State government . . . shall be republican, and not repugnant to the ordinance"[54] referred to. If the constitution presented to Congress had included a State-Church or the disqualification of Roman Catholics or Jews it certainly would not have met this test.

The state constitution adopted later the same year was one of the most comprehensive of any up to that time in its guarantees of religious freedom. It will be noticed that the closing section reproduced the wording of the guarantees on this subject in the Ordinance of 1787. The full statement, which was repeated with only a few modifications in the constitution of 1851, and not modified in the latest revision—that of 1912—reads:

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their conscience; that no human authority can, in any case whatever, control or interfere with the rights of conscience; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent; and that no preference shall ever be given by law to any

religious society or mode of worship, and no religious test shall be required, as a qualification to any office of trust or profit. But religion, morality, and knowledge being essentially necessary to the good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.[55]

The first sentence shows the influence in its wording of several of the early constitutions, notably those of the United States, New Jersey, and Georgia.

The reference to the "natural and indefeasible right to worship Almighty God" is one of the most characteristic of religious-freedom guarantees in state constitutions. Moehlman says that of the twelve states admitted to the union between Connecticut (1791) and Michigan (1837) eight used this terminology, and three others asserted the same right in other words.[56]

Louisiana—1804–1811. The case of Louisiana is so closely related with the important Louisiana Purchase of 1803 that it will be dealt with later when its implications for religious freedom are considered.[57] Suffice it here to say that religious freedom was assured by the Louisiana Territorial Act of 1804 and by the third section of an Act of Congress, February 20, 1811, to the effect that the constitution of the state to be formed out of the Territory of Orleans should "contain the fundamental principles of civil and religious liberty," while the Act of the following year admitting the state provided that "all the conditions and terms contained in said third section should be considered, deemed and taken as fundamental conditions and terms, upon which the said State is incorporated into the Union."[58]

Florida—1819–38. The treaty by which Spain ceded Florida—that is both east and west Florida—to the United States, concluded in 1819 and proclaimed in 1821, contains full guarantees of religious freedom for the inhabitants of this newly acquired territory. Article V reads: "The inhabitants of the ceded territories shall be secured in the free exercise of their religion, without any restriction. . . ."[59]

This is historically significant because of the Roman Catholic background of the state due to its early association with Spain, and the fact that the St. Augustine parish, founded in 1565, is the oldest in the United States. The form of Church-State union which existed during much of the colonial period does not seem to have been encouraging.[60] During the brief English rule (1763–1783), however, freedom of religion was guaranteed, though Roman Catholics maintained that officials interpreted it unfairly to their interests.[61]

When Congress established the Territory of Florida in 1822 this guarantee was reaffirmed:

And be it further enacted, That, to the end that the inhabitants may be protected in

their liberty, property, and the exercise of their religion, no law shall ever be valid which shall impair, or in any way restrain, the freedom of religious opinions, professions, or worship.[62]

When the third step was taken by which Florida became a state, the constitution drafted by delegates of the territory in 1838 and duly submitted to Congress was accepted because it was "republican" in character, and provided in its Bill of Rights:

That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience; and that no preference shall ever be given by law to any religious establishment or mode of worship in this State.[63]

To bring this brief survey up to date, and to show the continuity and expansion of religious-freedom guarantees characteristic of our states, the provision on the subject in the latest constitution, that of 1885, is here given:

The free exercise and enjoyment of religious profession and worship shall for ever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of, or inconsistent with, the peace or moral safety of the State or society.

No preference shall be given by law to any church, sect or mode of worship, and no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination, or in aid of any sectarian institution.[64]

Texas—1845. The case of Texas was particularly interesting. Owing to its early association with Mexico, it had inherited a Roman Catholic tradition. The Church was duly established by law; but by the treaty of annexation, whereby the Republic of Texas was incorporated into the United States, religious freedom was guaranteed, and by the first state constitution, that of 1845, the Roman Catholic religion was reduced "from the high privilege of being the only national church, to a level and an equality with every other denomination."[65]

California—1848–49. California was ceded to the United States by the Treaty of Guadalupe Hidalgo in 1848 at the close of the Mexican War. It had come under the jurisdiction of Mexico in 1822 but had remained practically autonomous. The next quarter of a century was marked by the influx of Americans, the decline of the missions, and dissatisfaction with Mexican rule. The last of these culminated in the revolt led by an American officer, John C. Frémont (1813–90), and occupation by United States naval and military forces during the Mexican War. It was proclaimed part of the United States by Commodore Sloat in July, 1846.

The Treaty of Guadalupe Hidalgo, as originally drafted, contained as Article IX a provision that until the Mexicans in the territories ceded should be admitted to citizenship they "shall be maintained and protected in the free enjoyment of their liberty and property and secured of the free exercise of their religion without restriction."[66] This article was somewhat modified by a later protocol, the following provision from the treaty ceding Louisiana in 1803 being substituted:

The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.[67]

A constitution was drafted in 1849. Its Declaration of Rights contained this guarantee of religious freedom:

Section 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.[68]

There was also a provision in Article XI to the effect that members of the legislature and all important executive and judicial officers should take and subscribe an oath or affirmation in these words:

I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the constitution of the State of California, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability.[69]

These provisions in substantially this form were retained in the constitution of 1879, so California started its career with guarantees of religious freedom. The California wording was followed in some other Western states, although frequently improved in two respects—to prevent discrimination in all political or civil rights because of religion; and to assure equality before the law of all religious bodies. For example, the constitution of Colorado, adopted in 1876 and approved by Congress the same year, broadened the guarantees so as to read:

That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied

any civil or political right, privilege, or capacity on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the good order, peace, or safety of the State. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.[70]

Furthermore, as we shall see later,[71] Colorado and about a dozen other states, mostly new states in the West, have constitutional provisions against any appropriation of public funds to any "denominational or sectarian institution or association." The states admitted since the Civil War have also been required by Congress to enter into a compact with the Federal government, securing among other things, religious toleration in matters of religious belief, and providing that no inhabitant be molested in person or property because of his or her mode of religious worship.

In the period from the end of the eighteenth century to the close of the Civil War most of the new states admitted, being carved from the Northwest Territory, or influenced by the Ordinance of 1787, or the Act of 1804, admitting the lands of the Louisiana Purchase to territorial status, had agreements as to religious freedom. Since the close of the Civil War—partly due to these same influences, and partly to the desire to prevent the spread of Mormon polygamy —new states were in most cases admitted under a Federal compact involving the prevention of slavery and providing a religious-freedom guarantee.

For instance, the admission of Nevada in 1864 required in the enabling act that the constitutional convention should provide "That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship."[72] This clause was followed in the cases of Arizona, Idaho, New Mexico, North Dakota, South Dakota, Utah (with the addition for the first time of a guarantee against "polygamous and plural marriages"), Washington, and Wyoming—states which have all incorporated a religious-freedom ordinance into their constitutions, agreeing never to modify it without consent of Congress.[73]

In other cases, such as Minnesota (1857), this requirement is not specifically mentioned, but it is probably inferred by the condition that the state government must be "in conformity with the Federal Constitution,"[74] and by the fact that former territories had all previously enjoyed its religious-freedom provisions. Such freedom in the states has, however, been due historically mainly to the wishes and actions of the states themselves, and only secondarily to the requirements of the Federal government.

It will be noticed that the states which have been admitted to the union have come in in three different ways:

(1) *The original states.* These were the twelve whose representatives united in framing the Constitution, and Rhode Island, which had united in the Declaration of Independence and in the Confederation, but which did not ratify the Federal Constitution until 1790. The example and influence of the religious-freedom debates over the Constitution and Bill of Rights which they helped to frame, and of the discussions of their ratification, encouraged those which had not previously of their own motion provided for religious freedom to take similar action.

To these Vermont and West Virginia may well be added. Vermont fought with the colonies in the Revolution, shared their views, and joined the union in 1791, immediately after the formation of our Federal government—having been virtually an independent state since 1777. West Virginia was carved out of Virginia and inherited its traditions. It became a separate member of the union in 1863 with a constitution approved by Congress—subject to ratification of an amendment regarding the freeing of slaves, which was duly adopted—and having the following inclusive religious-freedom guarantee:

Sec. 9. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever; nor shall any man be enforced, restrained, molested, or burdened in his body or goods, or otherwise suffer, on account of his religious belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish, or enlarge their civil capacities. And the legislature shall not prescribe any religious test whatever; or confer any peculiar privileges or advantages on any sect or denomination; or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.[75]

(2) *The thirty states* formed out of existing territories, such as Ohio and Arkansas. Almost all of these had religious freedom guaranteed under one of three agreements: The Ordinance of 1787 for the government of the Northwest Territory; the Louisiana Purchase Treaty of 1803, followed by the Congressional Act of 1804 setting up the Territories of Louisiana and Orleans; or the treaty of peace in 1848, at the close of the Mexican War. This treaty provided for the acquisition of the old Spanish possessions making up the present states of California, Nevada, Utah, and large parts of New Mexico and Colorado. Of this area all except California passed through regular American territorial rule.

(3) *The two states* in the Far West and Southwest which were made states without passing through the territorial stage, namely Texas (1845) and California (1850). Those were annexed, Texas by treaty with the nine-year-old Republic of Texas under a constitution approved by Congress, which guaranteed religious freedom;[76] California by the Treaty of Guadalupe Hidalgo (1848) as part of the Mexican War settlement. It was under a United States military rule of a quasi-territorial character for two years until admitted as a free state in 1850. In each of these transfers of authority religious freedom was specifically guaranteed.[77]

Fortunately, all the states now have guarantees of religious freedom. These are generally one of three types:

The first is found, for instance, in the Oregon constitution of 1857, and virtually a repetition in a state constitution of the requirement in the Federal Constitution. It says: "No religious test shall be required as a qualification for any office of trust or profit."[78]

The second type is that of the constitution of Oklahoma, adopted in 1907:

> Sec. 2. Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship: and no religious test shall be required for the exercise of civil or political rights. Polygamous or plural marriages are forever prohibited.[79]

The last clause, growing out of the Mormon controversy, is used by several other Western states.

The third type of guarantee is a little more elaborate. A characteristic statement is in the New York constitutions of 1846 and 1895. This reads as follows:

> Sec. 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.[80]

In the constitutional revision of 1938 the prevention of discrimination against any person because of his religion was specifically provided for. The Bill of Rights now states that:

> No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.[81]

As a result of the influence of the Federal Constitution and its Bill of Rights,

and of various Congressional actions supported by local sentiment, all the constitutions of the newly established states had in the course of the first few decades of the nineteenth century adopted the principle of religious freedom. Only slight vestiges remained of the old connection of some colonies with a religious body. The movement for ecclesiastical separation was undoubtedly aided by the rise to power of the new Republican (now Democratic) party in opposition to the Federalists, after the triumph of Thomas Jefferson in 1800.[82]

Many of the newer as well as of the older states, however, specifically referred in their constitutions to belief in God. Indeed, more than a fourth of the states have such a general statement of belief. These are Arkansas, Connecticut, Delaware, Idaho, Massachusetts, Missouri, Montana, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, and Vermont.[83]

The declarations of the first four mentioned are worth recording as typical of the others.

Arkansas (1874): "We the people of the State of Arkansas, grateful to Almighty God for the privilege of choosing our own form of government; for our civil and religious liberty; and desiring to perpetuate its blessings . . . "[84]

Connecticut (1818): "The people of Connecticut, acknowledging with gratitude the good providence of God in permitting them to enjoy a free government, do . . . "[85]

Delaware (1897): "Through Divine goodness, all men have by nature the rights of worshiping and serving their Creator according to the dictates of their consciences. . . . Although it is the duty of all men frequently to assemble together for the public worship of Almighty God: . . . yet no man shall or ought to be compelled to attend any religious worship. . . ."[86]

Idaho (1889): "We, the people of the State of Idaho, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare do establish this Constitution."[87]

It will be noticed that all these statements are of a general character equally acceptable to all religious groups. None asks for the specific recognition of Christ, which would indeed scarcely be possible under our Federal Constitution. It is worth recording, however, that the first constitution of South Carolina —1778—carried the provision that "The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this State," and furthermore provided that a religious society to be incorporated must believe "That the Christian religion is the true religion."[88] Provisions somewhat similar to the first named were found in a few other early state constitutions.

No religious body or theological opinion (except in a few cases where for the performance of certain public acts belief in God is required or implied[89]) is

now given legal advantages over any other; except that the legislature of New Hampshire still has power under its constitution of 1912 to authorize certain towns "to make adequate provision at their own expense for the support and maintenance of public Protestant teachers of piety, religion and morality."[90]

Several states still have the requirement that no one may serve on a jury who does not believe in God,[91] but this does not exclude Jews or other theists. Similarly, Maryland requires belief in God for holding public office or serving as a witness.[92] In some early constitutions such requirements were extended to include acceptance of both the Old and New Testaments—which excluded all except Christians. It is believed that no such requirement is now in force, though the state of New Hampshire has a specific recognition of Christianity: "And every denomination of Christians, demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law. . . ." This clause still appears in the revised Bill of Rights in *The Constitution of the State of New Hampshire*, as published by the state giving amendments in force January 1, 1935. It does not in actual practice interfere with the rights and privileges of Jews and other non-Christians.

But these trifling exceptions to the general rule only indicate how general religious freedom is in the United States.

To be sure, nearly half the states incorporate in their constitutions the theory held by the fathers, and a recognized part of the law of this country since the Supreme Court decision declared the authorized practice of Mormon polygamy to be unconstitutional,[93] to the effect that religious freedom cannot permit certain forms of conduct dangerous to organized society. This is generally expressed by stating that freedom of conscience "shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state." Sometimes, as in Maine and some other New England states, the qualifying clause regarding the citizen's freedom of belief merely reads, "provided he does not disturb the public peace, or obstruct others in their public worship."[94]

Such clauses are objected to by some advocates of religious freedom; but as the state must be able to prevent serious disorders, and as our higher courts can in general be trusted to interpret such clauses liberally, they do not seem open to serious criticism.

The survey entitled *Religious Liberty in the U. S. Today*, published by the American Civil Liberties Union in 1939, closes with these significant words: "On the whole, the restraints are slowly giving way to a larger freedom, but the united and uncompromising efforts of all those to whom religious liberty is a cherished ideal are necessary if it is to be maintained and extended."[95]

Section 3. THE ATTEMPTED EXCLUSION BY LAW OF CLERGYMEN FROM PUBLIC OFFICE

The only very early evidence I have found that questions the wisdom of having clergymen active in the American Federal government is an action taken by the Continental Congress under date of July 25, 1778. We are told that "a motion was made, that the sense of the house be taken, whether it is proper that Congress should appoint any person of an ecclesiastical character to any civil office under the United States." Evidently, however, there was relatively little interest in the matter, as when the previous question was put it was carried, and Professor Humphrey tells us that it was never again brought forward.[96] But on the state scene as distinguished from the national one the issue was often sharply raised.

In the early days of the republic some of the Eastern and many of the Southern states, in their belief that Church and State should be kept separate, provided in their constitutions that ministers of religion should not be elected to membership in their legislatures or to certain other offices. This was partly to prevent the undue influence of any denomination in state political affairs, and partly to prevent clergymen from being drawn away from their important ministerial tasks. It was felt by some that New England ministers in particular had been unduly active in political life—the Congregationalists as supporters of the status quo, and the Baptists and some other dissenters in demanding legislative changes. It is also not improbable that the activity of some clergymen in slave states in behalf of emancipation had created a reaction. An example was the Reverend David Rice (1733–1816), a Presbyterian minister, who was the leader of the antislavery forces in the debate on Kentucky's first constitution. For these and other reasons, and especially from fear lest the principle of Church and State separation might be compromised, constitutional provisions for preventing ministers from holding important political offices were sought. In all, thirteen states had such provisions—or about half of those admitted to the union in the first half century after independence. Except for New York they all were Southern or border states.

The earliest was North Carolina (1776), with its strong Scotch-Irish Presbyterian background. Here the constitution provided:

> That no clergyman, or preacher of the gospel, of any denomination, shall be capable of being a member of either the Senate, House of Commons, or Council of State, while he continues in the exercise of the pastoral function.[97]

This provision was dropped in the revision of 1868.

New York went further in its constitution of 1777 (Article 39) by making clergymen of all denominations ineligible for public office. This provision, which lasted until nearly the middle of the nineteenth century, is here given in full:

> And whereas the ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function; therefore, no minister of the gospel or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding, any civil or military office or place within this State.[98]

South Carolina (1778–1868), followed by Mississippi (1817–32) and Texas (1866–68), had virtually the same form, with only minor changes. That of the first named as adopted in 1778 read:

> And whereas the ministers of the gospel are by their professions dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function, therefore no minister of the gospel or public preacher of any religious persuasion, while he continues in the exercise of his pastoral function, and for two years after, shall be eligible either as governor, lieutenant-governor, a member of the senate, house of representatives, or privy council in this State.[99]

Delaware accomplished the same major purpose in its constitution of 1792, by excluding ministers from "holding any civil office in this State," a prohibition which was discontinued in 1831.[100] Maryland had this same provision from 1851 to 1864.[101]

Virginia and Georgia had similar restrictions in Revolutionary constitutions. The Georgia constitutional proposal to eliminate clergymen from being elected to important political office, adopted in 1777, met with a vigorous dissent from President John Witherspoon (1723–94) of Princeton—one of the fathers of the republic.[102] It is printed later in this section.

The constitution of Kentucky, adopted in 1799, continued in the revision of 1850, and dropped only in 1890, a prohibition with the same objective but applying only to the governor.

The wording of the first Louisiana constitution is interesting. It reads:

> No person *while he continues to exercise the functions* of a clergyman, priest or teacher of any religious persuasion, society or sect, shall be eligible to the general assembly or to any office of profit or trust under this State.[103]

It seems not unlikely that this proviso was added because of the influence of a former Jesuit priest, Eligius Fromentin (d. 1822), a jurist, who represented the state in the United States Senate from 1813 to 1819.[104]

The opinion of James Madison (1751–1836) on the subject is contained in his "Remarks on Mr. Jefferson's draught of a constitution" for Virginia prepared in October, 1788:

Does not The exclusion of Ministers of the Gospel as such violate a fundamental principle of liberty by punishing a religious profession with the privation of a civil right? does it [not] violate another article of the plan itself which exempts religion from the cognizance of Civil power? does it not violate justice by at once taking away a right and prohibiting a compensation for it? does it not in fine violate impartiality by shutting the door agst the Ministers of one Religion and leaving it open for those of every other.[105]

Jefferson later came to much the same position as Madison on this matter, and dropped his objection to granting full civil rights to clergymen.

President Witherspoon of Princeton, who had been a forceful member of the Continental Congress, and himself a Presbyterian minister,[106] also did not like the idea of excluding clergymen as such from public office. When the matter was being vigorously discussed because of the action to this effect taken by the state of Georgia, he wrote a protest to one of the influential papers of the state.

In your paper of Saturday last, you have given us the new Constitution of Georgia, in which I find the following resolution, "No clergyman of any denomination shall be a member of the General Assembly." I would be very well satisfied that some of the gentlemen who have made that an essential article of this constitution, or who have inserted and approve it in other constitutions, would be pleased to explain a little the principles, as well as to ascertain the meaning of it.

Perhaps we understand pretty generally, what is meant by a clergyman, *viz.* a person regularly called and set apart to the ministry of the gospel, and authorised to preach and administer the sacraments of the Christian religion. Now suffer me to ask this question: Before any man among us was ordained a minister, was he not a citizen of the United States, and if being in Georgia, a citizen of the state of Georgia? Had he not then a right to be elected a member of the assembly, if qualified in point of property? How then has he lost, or why is he deprived of this right? Is it by offence or disqualification? Is it a sin against the public to become a minister? Does it merit that the person who is guilty of it should be immediately deprived of one of his most important rights as a citizen? Is not this inflicting a penalty which always supposes an offence? Is a minister then disqualified for the office of a senator or representative? Does this calling and profession render him stupid or ignorant? I am inclined to form a very high opinion of the natural understanding of the freemen and freeholders of the state of Georgia, as well as of their improvement and culture by education, and yet I am not able to conceive, but that some of those equally qualified, may enter into the clerical order: and then it must not be unfitness, but some other reason that produces the exclusion. Perhaps it may be thought that they are excluded from civil authority,

that they may be more fully and constantly employed in their spiritual functions. If this had been the ground of it, how much more properly would it have appeared, as an order of an ecclesiastical body with respect to their own members. In that case I should not only have forgiven but approved and justified it; but in the way in which it now stands, it is evidently a punishment by loss of privilege, inflicted on those who go into the office of the ministry; for which, perhaps, the gentlemen of Georgia may have good reasons, though I have not been able to discover them.

But besides the uncertainty of the principle on which this resolution is founded, there seems to me much uncertainty as to the meaning of it. How are we to determine who is or is not a clergyman? Is he only a clergyman who has received ordination from those who have derived the right by an uninterrupted succession from the apostles? Or is he also a clergyman, who is set apart by the imposition of hands of a body of other clergymen, by joint authority? Or is he also a clergyman who is set apart by the church members of his own society, without any imposition of hands at all? Or is he also a clergyman who has exhorted in a methodist society, or spoken in a quaker meeting, or any other religious assembly met for public worship? There are still greater difficulties behind:—Is the clerical character indelible? There are some who have been ordained who occasionally perform some clerical functions, but have no pastoral charge at all. There are some who finding public speaking injurious to health, or from other reasons easily conceived, have resigned their pastoral charge, and wholly discontinued all acts and exercises of that kind: and there are some, particularly in New England, who having exercised the clerical office some time, and finding it less suitable to their talents than they apprehended, have voluntarily relinquished it, and taken to some other profession, as law, physic, or merchandize—Do these all continue clergymen, or do they cease to be clergymen, and by that cessation return to, or recover the honourable privileges of laymen?

I cannot help thinking that these difficulties are very considerable, and may occasion much litigation, if the article of the constitution stands in the loose, ambiguous form in which it now appears; and therefore I would recommend the following alterations, which I think will make every thing definite and unexceptionable.

"No clergyman, of any denomination, shall be capable of being elected a member of the Senate or House of Representatives, because [here insert the grounds of offensive disqualification, which I have not been able to discover] Provided always, and it is the true intent and meaning of this part of the constitution, that if at any time he shall be completely deprived of the clerical character by those by whom he was invested with it, as by deposition for cursing and swearing, drunkenness or uncleanness, he shall then be fully restored to all the privileges of a free citizen; his offence shall no more be remembered against him; but he may be chosen either to the Senate or House of Representatives, and shall be treated with all the respect due to his *brethren*, the other members of Assembly."[107]

The last paragraph shows that the good president could indulge in irony when he felt that conditions warranted it.

Some states debated the advisability of disqualifying clergymen from holding public office but decided adversely. For instance, in the constitutional convention of 1818 in Connecticut a proposal that "no clergyman or preacher of the gospel of any denomination, shall be capable of holding any civil office in this State, or of being a member of either branch of the Legislature, while he continues in the exercise of the pastoral or clerical functions," was laid on the table.[108]

An even more important milestone in the history of the departure from the early American attempts to exclude ministers from public office was the action reflected in New York's new constitution of 1846. This struck out the provision referred to earlier in this section, which had for nearly three-quarters of a century disqualified all clergymen from holding state offices, "thus," according to Judge Edgar Cullen of the New York Court of Appeals in a well-known case involving the civic rights of atheists which he supported, "making the divorce between the state and religious creeds complete."[109]

The only states which continue to disqualify ministers from certain offices are Maryland and Tennessee, and in each case the disqualification applies only to membership in the state legislature. The existing provisions are as follows:

Maryland. Constitution, Article III, Sec. 11:

> No minister or preacher of the gospel, or of any religious creed or denomination, and no person holding any civil office of profit or trust under this State, except justices of the peace, shall be eligible as senator or delegate.

Tennessee. Constitution, Article IX, Sec. 1:

> Whereas, ministers of the gospel are, by their profession, dedicated to God and the care of souls, and ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination whatever, shall be eligible to a seat in either House of the Legislature.[110]

This last provision breathes the spirit, and largely copies the letter, of some of the very early state actions.

Delaware retained a similar disqualification of an even broader type, forbidding an ordained minister from "holding any civil office in the State" in its constitution of 1831, but this was not continued in the constitution of 1897.

There have been a few ministers of religion in Congress and in civil positions under the Federal government—and there is no law to prevent it—but very few in comparison with the number of Roman Catholic clergy in the parliaments of some States on the continent of Europe, or the number of Anglican bishops who hold membership ex officiis in the House of Lords. Among those whose names come readily to mind are the Reverend Manasseh

Cutler (Congregationalist), a member of Congress from 1801 to 1805; the Reverend Henry Augustus Mühlenberg (Lutheran), a member of Congress from 1829 to 1838, twice candidate of the Democratic party for governor of Pennsylvania, and minister to Austria, 1838 to 1840; the Reverend Owen Lovejoy (Congregationalist), a highly influential antislavery member from 1856 to 1864; the Reverend Samuel J. Barrows (Unitarian), a member of Congress from 1896 to 1898; the Reverend Henry van Dyke (Presbyterian), minister to the Netherlands, 1913 to 1917; the Honorable Elbert Thomas (Mormon), long a missionary of the Church of Latter Day Saints in Japan, and now a respected member of the United States Senate; and Monsignor Francis Haas (1889–), long with the Catholic University of America, who has held many important posts under the Federal government in connection with the settlement of labor disputes and securing fair industrial practices. He is now bishop of Grand Rapids.

Perhaps the most interesting case of a clergyman elected to national political office in the early years of the republic was that of the Reverend Gabriel Richard (1767–1832), a French priest of the Roman Catholic Church, who played a large part in the early religious, philanthropic, and educational life of Michigan. The French Revolution drove him from his native land in 1792. He spent several years in missionary work in Illinois, and reached Detroit in 1798, immediately making his influence for good felt both among the Indians and the white population. He established a young ladies' academy, a seminary to foster vocations for the priesthood, and other institutions. He established several Indian schools and built churches. He was one of the founders of the University of Michigan, in 1817, served as its vice-president, and was professor in six of the thirteen departments in which the institution was originally divided! At the request of the governor and other officials, in 1807 he gave lectures on the principles of religion every Sunday at the council house, these being attended by Protestants and Catholics alike. He wrote to Bishop Carroll, "As there was no English minister here of any denomination, I thought it might be of some utility to take possession of the ground."[111]

His long interest in public matters resulted in his being elected in 1823 a delegate to Congress from Michigan territory. This is believed to be the only instance in which a priest has held a seat in the House. He won over many candidates, receiving large non-Catholic support, and gave to the Church the salary he received from the government. In Congress he made a notable speech advocating the bill for the opening of a post road from Chicago to Detroit. He was greatly respected by all. Henry Clay held him in especially high esteem, frequently repeating his friend's arguments to the House when the latter's English was defective. He was again a candidate for election in 1826 but failed,

chiefly because of the opposition of a prominent trustee of his Church who had opposed his policies.

In 1808 he went to Baltimore and secured a printing press and type, from which he issued in 1809 the first Catholic paper in the United States, which was also the first paper published in Michigan. In the cholera epidemic of 1832 the venerable missionary rendered great public service. His published life, which appeared in French in Paris in 1850, bears the appropriate title *Le Martyr de la Charité.*

Press reports have recently referred to five ministers of the gospel in the Mississippi legislature, four Baptists of various groups, and one Episcopalian; and a Presbyterian minister, the Reverend J. R. Hanley, was (1943) elected lieutenant governor of New York.

These examples are cited merely to show that the separation of Church and State in America is no legal impediment to a minister of religion of any denomination holding public office, except for the minor restrictions noted in Maryland and Tennessee. Indeed, I have found one case where the holder of an ecclesiastical position is named by law as the incumbent of such an office. This is the Archbishop of Santa Fé, who under the statutes is a member of the board of the state's Orphan Home and Industrial School in New Mexico.[112] This case is unusual, explained by the peculiar history of the state with its strong Catholic background and large Mexican population.

In general it has seemed more consistent with the ideals of religious freedom to make no legal distinction between the civil rights of laymen and clergymen in the matter of holding office, leaving the decision in each case to the individual concerned or to the restrictions, if any, of his communion, and to the judgment of the electorate. In this respect the change that has come over public opinion as expressed in constitutions is somewhat similar to that regarding belief in God as a requirement for election to certain public offices.

We shall deal in a later section[113] with the part played by clergymen in fighting political corruption in modern times.

Section 4. THE DEVELOPMENT OF HIGHER EDUCATION TO MEET NEW NEEDS OF THE STATE

Colleges and schools were both profoundly influenced by the development of the American republic. It will for obvious reasons be more convenient to deal with schools when we come to consider the beginnings of nonsectarian public education.[114]

Suffice it here to say that the Federal Constitution made no provision for education. This was assumed to be a state matter, and the Constitutional Con-

vention did not even discuss it except for a passing reference to the possibility of establishing a national university. The promotion of education was not among the specified powers granted to Congress under Article I, Section 8; and Amendment IX of the Bill of Rights perhaps excluded it as a major Federal activity by its statement that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." After the Constitution came into force, colonial systems of education continued for some time about as they had been in the past. In most cases the states permitted the dominating Church, such as the Congregationalists in Massachusetts and other parts of New England, to continue to provide most of the education through the old academies, but little by little they developed new institutions or systems of education of their own. New York took the lead by passing in 1795 an "Act for the Encouragement of Schools," but nothing approaching the modern highly organized state systems of public tax-supported education was adopted until several decades later, during the governorship of DeWitt Clinton (1817–23 and 1825–28). Pennsylvania followed (1834), and then Massachusetts (1837), Connecticut (1838), and North Carolina (1839). With this preliminary statement about the state school movement, which was later in origin than the state university movement, we shall dismiss the matter for the present. Here we shall confine ourselves to the field of higher education, taking special account of changes as they affected the Churches and their institutions.

In considering higher education we shall see that the most important early development due to the separation of Church and State under the Constitution was the establishment of public, as distinct from Church, institutions, the various states of the union rather than the Federal government assuming the major responsibility. There was also a marked development of religious toleration in the administration of colleges and universities—a tendency which had begun to show itself a quarter of a century earlier in the most liberal colonies.[115]

At the time of the Revolution there were about twenty-five hundred graduates of the nine colleges then existing in the American colonies.[116] These men had played an important part in the Revolution, the overwhelming majority favoring the patriotic cause.[117] The effect of the war and of the founding of the new government on higher education in the United States was manifold, both in developing education under state auspices and in modifying education in privately controlled institutions. Perhaps the most significant results were these.

First. Several state universities were established. The first of these was the University of North Carolina in 1789. It is interesting to note that the constitution of the state, which was adopted in December, 1776, provided for "one or more university," but it took more than a decade to get the institution started,

and it was not actually opened until 1795.[118] It did not differ greatly in atmosphere from the older colleges. Its able president during most of the first third of the century was a Presbyterian minister, the Reverend Joseph Caldwell (1773–1835), who insisted on regular attendance by students at religious worship and on orthodox religious instruction. He had strong support from the legislature.[119]

South Carolina did not follow until 1801, when South Carolina College was established at Columbia. This state was slow in developing a strong state university, partly because so many South Carolinians, more than from any other colony, went to England for their higher education, especially at the Inns of Court. These were attended by over one hundred Americans from 1750 to 1780.[120]

The university, however, attained considerable renown because of the identification with it from 1821 to 1834 of Thomas Cooper (1759–1839), an erratic but able and distinguished liberal philosopher and publicist who was a friend of Jefferson. He represented a cold form of Unitarianism, and at times a hard materialism. To have a thoroughly unorthodox president known to be specially opposed to the powerful Presbyterian clergy as the president of a Southern state institution was sure to cause Church-State difficulties. These began with his appointment and continued at intervals throughout his administration. In 1822–23 his attacks on a "hired clergy," and especially on the Presbyterian "priesthood," were largely responsible for presentments against him by grand juries in two upstate counties.[121] The legislature was persuaded to investigate. He defended himself, taking the ground that it was not within the power of legislature or state university trustees to engage in a religious controversy. His trial before the trustees was held in the hall of the state House of Representatives December 4 and 5, 1832. Although exonerated, he resigned the presidency the following year.

Cooper's feud with the Presbyterians was of long standing. A letter written by him in 1822 is a striking example of an issue which has been rare in the United States and especially in the South—that of a bitter controversy between a state university president and a large religious group, raising the issue of religious freedom. Here is a characteristic quotation from one of his letters:

> Equally decided and persevering is the attempt of the same sect to acquire the command over every seminary of education, and finally to establish, in favour of the Presbyterians, a *Church establishment*. Of these designs on the part of that sect I am as fully persuaded as I am of my own existence; and what is worse, I greatly fear they will succeed. The people, not aware of the frauds committed, are the gross dupes of missionary societies, Bible societies, and theological seminaries; and every head of a family of religious turn, or in any way connected with that sect, must submit to the power these parsons have acquired,—acquired by making the females of the families

which they are permitted to enter the engines of their influence over the male part. I foresee another night of superstition, not far behind the Inquisition; for so rancorously is every opponent calumniated that the persecution becomes gradually irresistible, and the men who hate these impostors & their frauds are actually compelled to bow down to them. I look around me, and knowing, as I do, the general prevalence of liberal opinions on religious subjects among well educated men, I regard with absolute horror the system of stimulation and dissimulation which they are compelled to adopt; and I cannot help exclaiming with Lucretius: "Tantum haec religio potuit suadere malorum!" In the college here, the industry of the faculty is *exemplary,* their competence undeniable, but the cry is gone forth, "There is no religion among them," & I greatly fear it will make the college totter to its fall; for utterly false as it is, the want of prayer meetings and religious revivals will be accepted as undeniable evidence of the charge.[122]

There was ground for criticism on both sides. It must be said, however, in explanation of the attitude of the churches that Cooper was provocative and intolerant, and at his worst in religious controversy. Similar issues arose on other occasions, notably in 1831 when he opposed the legislation in Congress to prevent the carrying of the Sunday mails.[123] He declared that avaricious priests had ordained the Sabbath and that Christ had prohibited public prayers.[124] The Presbyterian clergy, whom he accused of trying to institute a Church establishment in the state, kept up their attacks upon him, and the feeling was so strong that his biographer appears to credit the report that he was buried in the Episcopal churchyard at Columbia because of Presbyterian opposition to the use of their burial ground.[125]

Other state universities followed that of South Carolina, as will be shown later[126] when we consider the various tensions which have developed between Church and State in the United States. Of these early institutions the most important were the University of Virginia (1819) and the University of Michigan (1837). The attitude taken by the founder of the first, Thomas Jefferson, to keep the university secular and free from Church control but at the same time to provide the inspiration of religion to its students is discussed in another section.[127]

The case of the University of Pennsylvania is particularly significant. In some ways it can be considered our first state university, for in 1779 the old Academy or College of Philadelphia—so closely identified with Franklin's views[128]—was adopted as a state institution and given a new charter by the legislature of the Commonwealth of Pennsylvania. This reorganized the board of trustees to provide that of the twenty-four trustees, the old number of self-perpetuating members, six should be ex officio state officers; six the senior ministers of the principal religious denominations of the city, including the Roman Catholic—a most significant departure from tradition; and twelve eminent citizens—

Franklin, Mühlenberg, and others.[129] The name of the institution is changed to the University of the State of Pennsylvania; the lesser seal of the state is adopted for it; the trustees, as state officials, are expected to take an oath of allegiance to the State,[130] and their election becomes subject to confirmation by the legislature, or to rejection within six months.[131] This plan, involving the university title with state connection, was here first used in the United States; but to satisfy the old provost and trustees of the college, who had opposed the 1779 charter as unfair to them, a new act was passed combining the old college and the new state university into the modern University of Pennsylvania, with a board of trustees made up half of the old board of the college, and half of members chosen by the trustees of the state university, all under the presidency of the governor.[132]

Second. A movement was started for the establishment in Washington of a national university under the Federal government and consequently without connection with any Church. Strangely enough, the only question regarding education which arose in the Federal Constitutional Convention was whether it would be possible under the Constitution for the Federal government to establish a university at the capital. Charles Pinckney (1757–1824)[133] was specially interested in the project, and Washington in the first draft of his "Farewell Address" had planned to include a reference to it. Special attention was given to the plan after the death of the president, who bequeathed certain valuable securities, which the commonwealth of Virginia had given him in recognition of his public services, for the establishment of a national university. A quotation from his will shows how closely his plan was related to promoting the welfare of the new government.

. . . It has always been a source of serious regret with me to see the Youth of these United States sent to Foreign countries for the purpose of Education, often before their minds were formed, or they had imbibed any adequate ideas of the happiness of their own; contracting too frequently, not only habits of dissipation and extravagance, but principles unfriendly to Republican government, and to the true and genuine liberties of mankind; which, thereafter are rarely overcome—For these reasons, it has been my ardent wish to see a plan devised on a liberal scale which would have a tendency to spread systematic ideas through all parts of this rising empire, thereby to do away local attachments and state prejudices, as far as the nature of things would, or indeed ought to admit, from our National Councils.—Looking anxiously forward to the accomplishment of so desirable an object as this is, (in my estimation) my mind has not been able to contemplate any plan more likely to effect the measure than the establishment of a UNIVERSITY in a central part of the United States, to which the Youths of fortune and talents from all parts thereof might be sent for the completion of their Education in all the branches of polite literature; in arts and sciences, in acquiring knowledge in the principles of politics and good government, and (as a matter of

infinite importance in my judgment) by associating with each other and forming friendships in Juvenile years, be enabled to free themselves in a proper degree from those local prejudices and habitual jealousies which have just been mentioned; and which, when carried to excess, are never failing sources of disquietude to the public mind, and pregnant of mischevious consequences to this country. . . .

Item. I give and bequeath in perpetuity the Fifty Shares which I hold in the Potomac Company (under the aforesaid acts of the legislature of Virginia) towards the endowment of a UNIVERSITY to be established within the limits of the District of Columbia, under the auspices of the general government, if that government should incline to extend a fostering hand towards it. . . .[134]

The presidents after Washington, including Jefferson, Madison, and John Quincy Adams, all advised the carrying out of this plan, though Jefferson thought that an amendment to the Constitution would be necessary to permit money being appropriated for the purpose by the Federal government. In spite of these endorsements the idea slumbered from that time until recently, now being supported by most leaders of public education in the West and opposed by most of the more conservative educational leaders of the Eastern universities.

The only direct ventures of importance by the government in the field of higher education—prior to the establishment of Howard University primarily for Negroes in 1867[135]—were the starting of the military and naval academies at West Point and Annapolis in 1802 and 1845 respectively; but as these were for the training of officers for the government there was no objection. These academies have beautiful chapels erected by Federal grants[136] whose services are conducted by official chaplains and are regularly attended by cadets and midshipmen.

Third. Establishment of schools of law. William and Mary College had the first chair of law in this country, established in 1779, and largely influential in Virginia. The trustees of Columbia College voted in 1784 to establish a law school with three professorships, but it was not until James Kent became a professor there in 1793 that any effective beginning was made. He resigned after a couple of years of effort, and did not return to teaching until 1823, when he began the lecturing career which resulted in his epoch-making *Commentaries on American Law* (1826–27). This became the generally recognized supplement to Blackstone in so far as American law under the judicial decisions and legislation of this country modified the English tradition.[137]

The first effective national school of law was that at Litchfield, Connecticut, established in 1784. This school, which had no connection with any university or Church, had a brilliant career for thirty-five years, educating over a thousand men for the bar. It drew students from the Southern states to Maine and from as far west as Ohio. The first Timothy Dwight (1752–1817), president of Yale

from 1795 to 1817, stated that "Law is here taught as a science, and not merely nor principally as a mechanical business; not a collection of loose independent fragments, but as a regular, well compacted system."[138] At that time, about 1815, the school had about forty students and was at the height of its influence. John C. Calhoun and many other men prominent in national life studied there, and the school did much to develop throughout the nation an understanding of the laws on which the American republic is based.

The next important law development was in connection with Harvard University. Its law school was established in 1817, but it did not become a real power until 1830, when the Dane Professorship of Law was founded, and the school developed, under the lead of Joseph Story (formerly a justice of the United States Supreme Court), Simon Greenleaf, and John Hooker Ashmun, that position of national leadership which it has since maintained, although the law schools of Yale College, established in 1843, of the University of Michigan at Ann Arbor, established in 1859, and others have at times pressed it closely. All these schools drew from a broad area. They made an important contribution to the development of American law and to the education of legal practitioners in American principles of jurisprudence.

Fourth. The making of grants by the Federal government to promote higher education in the states. This movement gained headway through the adoption by Congress in 1787 of the ordinance for the government of the Northwest Territory. This document, from which extensive quotations have been made above,[139] stated that "the means of education shall forever be encouraged." It provided that Lot 16 in each township should be given for purposes of education, and that no more than two complete townships should be given for purposes of a university. This gave the basis for the policy of public financial support for higher educational institutions under state auspices as distinct from those of the Church. From 1800 on most of the states admitted to the union received land for the purpose of founding a university. President Charles F. Thwing (1853–1937), in *A History of Higher Education in America* (1906), estimates that under the laws thus passed

> there had been granted to the states or reserved to territories, for universities or seminaries of higher learning, from the beginning to the middle of the year 1900, somewhat more than a million of acres of land. The number of grants and reservations made for common-school purposes has been more than sixty seven millions, and for agricultural and mechanical colleges about ten millions.[140]

The act of the legislature of the Northwest Territory of 1802, establishing a university and granting it two townships of land, exerted a marked influence throughout the West and North, as did also the provision that the university

should be governed by a board of trustees which should not be a close corporation, the successors of the first incumbents being chosen by the legislature. No limit was placed upon the amount of property which the university might own. Thus, Ohio University at Athens became in fact a truly state institution with large possibilities for development.[141]

Fifth. The broadening of the curriculum and the development of greater tolerance. The old college curriculum of the colonial period had been made up mostly of the classics and mathematics, with a little Christian philosophy. Now other subjects were added that would be specially valuable in a new and democratic State, such as botany, taught in a scientific way at the University of Pennsylvania in 1802 by Professor Benjamin Barton; chemistry, taught by the laboratory method and experiment through a separate professorship of chemistry and natural history at Yale in 1804; economics, at Harvard in 1820; history, at William and Mary in 1822; applied science, at Rensselaer in 1824; modern languages as one of the ten "schools" at the newly founded University of Virginia in 1825; the larger ethical problems of politics, at the University of South Carolina in 1835, by Francis Lieber, whose *Manual of Political Ethics* was adopted at Harvard in 1838; American history, at Harvard in 1842, by Jared Sparks;. graduate courses in philosophy and the arts, leading to the Ph. D. degree, at Yale in 1846.

These courses, representing new subjects of college study and new methods of teaching, greatly broadened the academic outlook, and tended to develop more tolerance in matters of religion. This also permitted more foreign-born scholars, in keeping with Jefferson's views, being found on college faculties, as such names as Guyot, Agassiz, and Lieber testify.

Sixth. The gradual nationalization of the Northern universities, which did much to break down both sectional and denominational prejudices. The older universities, such as Harvard, Yale, and Columbia, had been up to the Revolution mainly institutions which drew men from their own and the bordering colonies; but as a result of the development of national spirit and the improvement of means of communication these institutions began to take on early in the nineteenth century a national aspect. Princeton, for instance, partly because of its location, drew Southern students increasingly. Yale became particularly strong in South Carolina, owing to the influence of John C. Calhoun and other distinguished representatives of the South who went to New Haven for their education. There was a time in the 'twenties when there were more students from Charleston at Yale than from any other city outside of New York, New Haven, and Hartford.[142] Harvard made gains in Pennsylvania and New York, and all of the Eastern universities began to draw men from Ohio and other sections of the Central West and South, so that in the first half of the century

the beginnings were made of a truly national representation at our older universities. The College of William and Mary unfortunately suffered a decline and almost received its death blow in the Civil War, from which fortunately it has recovered in recent years. The University of Virginia was growing into one of the most honored universities in America, but strangely enough drew almost no students from outside the South. Its system of education, being based more on European methods, did not fit in with the democratic ideals of public education which were coming to the fore in New England.

Seventh. The founding of Roman Catholic colleges and universities. Prior to the Revolution all the colleges and universities which had been established in the United States were under Protestant auspices. Outside of Maryland there would not have been a constituency adequate to support a Catholic institution, and it is doubtful whether one could have been established in view of existing laws and public opinion. With the establishment of a new government, however, with entire separation of Church and State, and equal rights for all religious bodies, a Roman Catholic institution became natural and inevitable. The first one was founded in 1789 in Georgetown, then part of the state of Maryland, now in the District of Columbia, through the efforts of the Reverend John Carroll,[143] afterward Archbishop of Baltimore. The incorporated Catholic clergy of Maryland selected certain trustees from their own number and gave them full power to choose a president and professors. The college was opened in 1791. In 1805 it was handed over to the control of the Society of Jesus.

Eighth. The founding of new colleges, both denominational and undenominational. Up to the founding of our government in 1789 there had been established only seventeen institutions generally considered of college or university rank. From that time on the numbers greatly increased decade by decade up to the Civil War period, except at the time of the War of 1812. From 1790 to 1799 there were 7; 1800–1809, 9; 1810–19, 5; 1820–29, 22; 1830–39, 38; 1840–49, 42; 1850–59, 92.[111] The great majority of these were denominational foundations, but, as we shall see in the next section, a highly significant beginning was made in establishing undenominational or union institutions backed by several Churches. Although, as we have shown earlier in this chapter, the State was beginning to provide institutions of higher learning of its own, all sections of the country continued a century ago to look for higher education mainly to institutions founded, though not always directed, by the Churches. As Professor Cubberley states in his standard *History of Education:*

> There were, to be sure, a few state universities before 1870, though usually these were not better than the denominational colleges around them, and often they maintained a non-denominational character only by preserving a proper balance between the different denominations in the employment of their faculties. Speaking generally,

higher education in the United States before 1870 was provided very largely in the tuitional colleges of the different religious denominations, rather than by the State. Of the 246 colleges founded by the close of the year 1860, . . . but 17 were state institutions, and but two or three other had any state connections.[145]

This authoritative statement is evidence of what the State owes the Church in the United States in one field of education. It is but another example of the fact that Christianity played a vital part not only in providing the educational institutions of the American people but also in giving them a foundation for their whole outlook on life. Curti has expressed this well.

The Christian tradition, introduced by the first comers, reinforced by nearly all their European successors, and perpetuated by conscious effort, was the chief foundation stone of American intellectual development. No intellectual interest served so effectively as Christian thought to bring some degree of unity to the different classes, regions, and ethnic groups. . . .[146]

As a result, Christian ideals permeated not only denominational colleges, but nearly all the institutions founded in this period, even those under state auspices.

The founding of new universities and colleges was stimulated at this period by the United States Supreme Court decision in 1819 in the Dartmouth College case (*Dartmouth College* v. *Woodward*). Here Chief Justice John Marshall (1755–1835), in giving the opinion of the court, ruled that the legislative acts transforming the college, with its colonial charter of 1769 and its Congregational background, into a state university, were invalid since they impaired contractual (charter) obligations, and the Federal Constitution prohibits the states from impairing such obligations. In a word, Daniel Webster (1782–1852), who argued the case for the college, was upheld in his contention that a college charter duly granted by competent authority is an inviolable contract which a legislature can not impair. As a result of this decision, the states realized that to provide institutions of their own liking new foundations under public auspices were frequently needed. But at the same time the decision, with its guarantee of the inviolability of chartered private institutions, was an encouragement to denominations to found new colleges, especially in the West.

The decision was to prove of great importance to the churches. Chancellor James Kent (1763–1847) is our high authority for the statement that it

did more than any other single act proceeding from the authority of the United States to throw an impregnable barrier around all rights and franchises derived from the grant of government; and to give solidity and inviolability to the literary, charitable, religious, and commercial institutions of our country.[147]

Looking at the decision after a century, we can see that it stands out as one

of the great contributions made by government in this country to the Churches, for it protects their property from spoliation by the State. This may have its dangers in tending to promote *laissez faire,* but these can be met in other ways by the force of public opinion.

We see from the above that the major activity in the United States in this period in the field of higher education was under the leadership of the state governments and of the Churches, or of institutions founded by the Churches. The period of establishing great independent and undenominational foundations by individual philanthropists did not begin until the second third of the century, Cornell not being incorporated until 1865 and Johns Hopkins until 1867. Nor did the Federal government establish any university in spite of much discussion of the project, or do anything directly for higher education, except through the military and naval academies at West Point and Annapolis, and through grants of land from the public domain to the new state governments in the West, for the purpose of establishing universities or colleges. Higher education was considered as mainly a field for the activities of the various states or of the different religious denominations.

Section 5. THE BEGINNINGS OF CO-OPERATION AMONG DIFFERENT RELIGIOUS GROUPS

The absence of a State Church under the republic, the religious guarantees of the Constitution and its Bill of Rights, and the general spirit of democracy which was increasing in this country, soon developed a degree of mutual respect and even of co-operation among religious bodies that was remarkable. We note signs of this immediately after the close of the Revolutionary War. In a pastoral letter sent to the people under their charge by the Presbyterian Synod of New York and Philadelphia, in May, 1783, its members wrote:

> We look upon it as a very happy circumstance in the political revolution that has happened in America, that neither in its rise nor progress was it intermixed with or directed by religious controversy. No denomination of Christians among us have any reason to fear oppression or restraint, or any power to oppress others. We therefore recommend charity, forbearance, and mutual service. Let the great and only strife be, who shall love the Redeemer most, and who shall serve him with the greatest zeal. . . .[148]

This apostolic message expressed the spirit animating the American Churches at the time, and was a good augury for the future.

In 1786 we find the president, with members of his cabinet and members of Congress, attending a dinner in connection with the dedication of the first Roman Catholic Church in New York City. As these persons were almost all

Protestants, it was an evidence of a new spirit of unity that was due very largely to the broad-minded and patriotic attitude of Bishop John Carroll (1735–1815).[149]

As early as 1789 Washington, in replying to an address from the bishops and clergy of the Protestant Episcopal Church in General Convention assembled, wrote:

> ... It affords edifying prospects, indeed, to see Christians of different denominations dwell together in more charity, and conduct themselves in respect to each other with a more Christian-like spirit, than ever they have done in any former age, or in any other nation.[150]

The president who wrote these words was himself in considerable measure responsible for the spirit he mentioned. As his correspondence with different religious bodies quoted throughout these volumes clearly shows,[151] he was trying to develop a religious spirit in the country and to discourage extreme denominationalism. An evidence of this new spirit was the development in 1790 of the First Day or Sunday School Society in Philadelphia, with directors from Episcopal, Roman Catholic, Quaker, and other communions. Another evidence was the attempt by Governor William Livingston (1723–90) in his late years to compose a prayer to comprehend and conciliate college students of every Christian denomination, formed entirely of texts and phrases of Scripture. Madison felt that even this was inconsistent with true religious freedom, as some students might object to any set form of prayer.[152]

New York seems to have shown special liberality and inclusiveness in its religious outlook, due partly to the traditions of a great mercantile port and partly to the fact that it served as the first capital of the nation. We know that ministers of the different denominations, including the Jewish rabbi, marched together in Washington's inauguration, and that in 1791 the Reverend Dr. William Linn (1752–1808), pastor of the Collegiate Dutch Church and first chaplain of the House of Representatives, said in his Fourth of July sermon that "no undue preference is given to one denomination above another. Every one stands upon equal footing, and can prove successful only by the piety, virtue, learning and liberality of its professors."[153]

Even before the close of the war, we see an attempt made to provide in Kentucky a college that would be conducted on a broad basis without denominational tests—Transylvania College, founded in 1780, in the region later to be named Kentucky. The Virginia Legislature provided that there should be no religious tests and no special privilege for any sect; but the Presbyterians, the leading force in its establishment, soon got control of the institution. This continued until 1816, when a Unitarian, the distinguished Reverend Horace Holley

(1781–1827), was put in as president, remaining for ten years (1818–27), after which the institution at his death returned to Presbyterian control. The author of *Liberal Kentucky* (1780–1828) ends his description of Transylvania with the statement that

> The ideal of a great central state university open to all religious denominations, and conducted on liberal principles, had been effectively quashed. With it went the possibility of the domination of liberal religious opinion in the state. Collegiate education now became the function of the small denominational college.[154]

Equally important was the tendency of the older colleges and universities to appeal to more students outside their own sectarian connections. Yale, though still Congregational, attracted a growing number of Episcopalians, and King's College, though founded under Anglican auspices, had even its professorships opened to all denominations. When in 1784 the state legislature appropriately and significantly changed its name to Columbia University it was stipulated

> that no Professor shall in any way whatsoever be accounted ineligible for or by reason of any religious tenet or tenets that he may or shall profess, or be compelled by any by-law or otherwise to take any religious test-oath whatsoever.[155]

Similarly, when somewhat later (1819) what is now Colgate University was chartered by the state of New York, though founded by Baptists, largely with a view of advancing their cause, it was provided that

> if the said Society shall at any time pass any law or regulation affecting the rights of conscience, the said corporation shall cease and be void.[156]

This is in accordance with the Baptists' historic stand for religious freedom, but it was significant of the growing liberalism in the early national period that this proviso should be inserted in a charter obtained from the state.

In 1795 we find a new type of institution of higher learning, Union College in Schenectady, New York, chartered by the state legislature, with the definite purpose of providing higher education under "Christian" auspices to meet the needs of all the religious denominations near what was then the Western frontier, and with the charter provision that no religious denomination should at any time have a majority in the board of trustees. This fellowship of the Churches was responsible for the "Union" name. The institution was destined to be the precursor of many American colleges founded through that co-operation of different groups which the spirit of the new Federal Constitution encouraged. It went considerably further in this respect than even Columbia College (1754). To be sure, Benjamin Franklin's Charitable School, chartered in 1753, which developed two years later into a college, and still later into the University of Pennsylvania, was not denominational, due to the breadth of its

founder, but this instance was not the result of active interdenominational co-operation[157]—in fact, some of the Churches were unsympathetic.

An early example of united action by American Churches to advance what was believed to be their common interests was in 1797. Representatives of twelve different Philadelphia Protestant denominations and of a Roman Catholic church—in all twenty-five in number, of whom five were ministers and twenty were laymen—united in a petition to the Pennsylvania legislature in the interest of quiet at the time of Sunday worship. The law, similar to earlier laws in New York, permitted a church to stretch a chain across the street in front of or near a church building to prevent the noise of passing traffic. It quoted the state Bill of Rights which protected the individual in his right to worship God, as well as previous laws designed to prevent business and sport on Sunday. It was enacted April 4, 1798, and was in force for thirty years, until the changed conditions of the city made it impossible of continuance. The Presbyterian Historical Society has preserved the chain used by the Third Presbyterian Church for this purpose.[158]

In the late winter of 1797 a meeting of the ministers of different denominations residing in and near Philadelphia was held to congratulate Washington on the occasion of his retirement from public life. This bringing together of religious groups was in and of itself characteristic, and was symptomatic of other meetings held elsewhere in this early national period. Washington, replying to their address, said:

> Believing, as I do, that religion and morality are the essential pillars of civil society, I view, with unspeakable pleasure, that harmony and brotherly love, which characterize the clergy of different denominations as well in this, as in other parts of the United States; exhibiting to the world a new and interesting spectacle, at once the pride of our country and the surest basis of universal harmony.[159]

The early years of the nineteenth century were marked by the camp-meeting movement in the West. Indeed, the first such meeting was held in the winter of 1799–1800. These meetings in the open air, rather than in buildings identified with any one religious body, created a general spirit of Christian fellowship.[160] The Methodists generally took the lead in them, but Presbyterians, Baptists, and others were also active. They were community events which brought together most people in rural areas, quite irrespective of their denominational affiliations.

In 1801, with the needs of the West specially in mind, the "Plan of Union" was developed between Presbyterians and Congregationalists in home missionary work, and the same communions united in 1810 in forming the American Board of Commissioners for Foreign Missions. There followed the devel-

opment of interdenominational Bible societies, starting in 1808 in Philadelphia, and reaching their climax in the founding of the American Bible Society in 1816.

Between 1812 and 1815 the missionary survey of the country was made under the leadership of Samuel J. Mills (1783–1818), a young Congregationalist, whose interest was in finding out religious conditions and trying to meet them through Protestant effort, whether of one Church or another, and in the distribution of Bibles.

In 1817 the New York, Northern, and Western missionary societies, later absorbed by the American Board and supported by Congregationalists, Baptists, and Presbyterians, was formed, and interested itself largely in Indian work.

And so the movement for co-operation among the Churches developed. A symbol of it was the establishment of the first Protestant church in St. Louis in 1815 with nine members, of whom five were Congregationalists and four Presbyterians. A friend of the pastor wrote: "He followed the great common Christianity above anything that marked mere denominational differences."[161] The church was really a union church, though affiliated with the Presbyterians.

This was the period when county courthouses in the South and West were much used as "common temples" for religious worship both for general or union services, especially in frontier communities, and for services of individual denominations in turn. The Albemarle county courthouse, still standing in the city of Charlottesville, was an example of the latter. Thomas Jefferson worshiped there occasionally. In his letter on religious freedom to Dr. Thomas Cooper, November 2, 1822, he wrote:

> . . . In our village of Charlottesville, there is a good degree of religion, with a small spice only of fanaticism. We have four sects, but without either church or meeting-house. The court-house is the common temple, one Sunday in the month to each. Here, Episcopalian and Presbyterian, Methodist and Baptist, meet together, join in hymning their Maker, listen with attention and devotion to each others' preachers, and all mix in society with perfect harmony. . . .[162]

The list of evidences of the new spirit of Christian fellowship which was brewing in the country,[163] largely as a result of the formation of the new independent and democratic government, could be increased many times, and would make an interesting special study. It may suffice here to add the impression that this broadening spirit, and the accompanying decline of intolerance, created on intelligent visitors from abroad in typical cases, from the last decade of the eighteenth century and third decade of the nineteenth. The first may be seen in *An Historical, Geographical, Commercial, and Philosophical View*

of the United States of America by William Winterbotham (1763–1829). The author's impressions have a freshness that indicate their sincerity and authenticity.

Quitting a country where the church is forced into an unnatural connection with the state, and where religious opinions are the subject of popular obloquy, and civil disqualifications; such will seek in America an asylum from civil persecution and religious intolerance—some spot where they will suffer no defalcation in political rights, on account of theological opinions, and where they may be permitted to enjoy a perfect freedom of speech as well as of sentiment, on the two most important subjects of human inquiry, religion and politics.[164]

This impression of the spirit of toleration in the new republic continued until after the close of its first quarter century. There were some difficulties in large eastern cities, but not many. As late as 1829 Mrs. Trollope was impressed by the fact that a leading Christian minister would debate in public with a freethinker, Robert Owen, about their respective convictions.[165] But soon after this time the picture changed, and although Protestant co-operation continued, especially in supporting agencies to help Christianize the West, the growth of Irish immigration was to create unfortunate clashes between Catholics and Protestants.

Section 6. THE DEVELOPMENT OF SELF-GOVERNING AND SELF-SUPPORTING NATION-WIDE CHURCHES

This matter is of such large importance, and requires going into so much detail in the treatment of all the more representative religious denominations, that it has been assigned to special sections. The Protestant Churches will be dealt with in XI; the Roman Catholic Church in XII, 2; and the Jewish Church in XIII, 3. In these sections we shall see how the various religious communions of the country were affected by the formation of the new government, and the new national spirit which developed.

Suffice it here to quote a few contemporary statements on the subject applying to all the Churches.

In Thomas Jefferson's *Notes on Virginia*, written in 1781–82, when the controversy over an assessment in behalf of the Christian churches was acute in his native State, he wrote of the good effect of having Church-State separation. He said:

. . . Our sister States of Pennsylvania and New York, however, have long subsisted without any establishment at all. The experiment was new and doubtful when they made it. It has answered beyond conception. They flourish infinitely. Religion is well supported; of various kinds, indeed, but all good enough; all sufficient to preserve

peace and order; or if a sect arises, whose tenets would subvert morals, good sense has fair play, and reasons and laughs it out of doors, without suffering the State to be troubled with it. They do not hang more malefactors than we do. They are not more disturbed with religious dissensions. On the contrary, their harmony is unparalleled, and can be ascribed to nothing but their unbounded tolerance, because there is no other circumstance in which they differ from every nation on earth. They have made the happy discovery, that the way to silence religious disputes, is to take no notice of them. . . .[166]

Madison, writing to Edward Livingston in 1822, refers to the fact that as far as Virginia is concerned,

It is impossible to deny that religion prevails with more zeal and a more exemplary priesthood than it ever did when established and patronized by public authority. We are teaching the world the great truth that Governments do better without kings and nobles than with them. The merit will be doubled by the other lesson that Religion flourishes in greater purity, without than with the aid of government.[167]

The following year, writing to Edward Everett, he also stated:

Prior to the Revolution, the Episcopal Church was established by law in this State. On the Declaration of Independence it was left, with all other sects, to a self-support. And no doubt exists that there is much more of religion among us now than there ever was before the change, and particularly in the sect which enjoyed the legal patronage. This proves rather more than that the law is not necessary to the support of religion.[168]

Similarly, a discriminating Scotch visitor to this country, writing on his return in 1844, called attention to the good effects of the voluntary principle of church support in the United States, and stated his conviction that it was largely due to the fact that American churches had been from the first so largely dependent on their own efforts, as the money sent from abroad for religious purposes was mainly for the evangelization of the Indians and for the support of colleges. He called to mind that even in those colonies which had an establishment the State did not support their churches adequately, while in all cases dissenters had to rely exclusively on their own efforts.[169]

Voluntary support has proved to have both advantages and disadvantages. Among the former is the developing of a larger sense of responsibility on the part of the laity for church welfare and the spread of religion; the removal of constant difficulties—the cause of many serious conflicts abroad—which come through securing state support, and through administering state supervision and control; the giving to every man the right to aid only that form of worship which appeals to his mind and conscience. Among the disadvantages are the inadequate provisions for religious education; the feeling by some that religion cannot be of vital importance if the State does not support it; the en-

couragement of an excessive number of sects lacking in any broad community feeling. Unfortunately in America, where there is no regular local parish to which all belong, the tendency is to look upon the Church as merely one of many quasi-public institutions which have to "compete" with labor unions, Rotary and other philanthropically disposed luncheon clubs, granges, Masonic lodges, social settlements, civic movements, and so on.

Under the new arrangements made by the states in the early decades after the adoption of the Constitution all the Churches became self-governing,[170] except as the Roman Catholic Church continued to be dependent upon Rome, and they all became self-supporting—and both factors in the end greatly strengthened their work. It meant a new sense of responsibility, with that of the laity largely increased. Both developments had been prepared for in the colonial period, partly by the Congregational principle, which had a broad influence, and partly by the necessities of the case due to the long distance from Europe.

Section 7. THE HISTORIC RELATION BETWEEN SECURING RELIGIOUS FREEDOM AND CHURCH-STATE SEPARATION IN THE UNITED STATES

The relation of religious freedom to the separation of Church and State in this country is an interesting question. That there is a close connection between the two is undeniable, even though we know of countries, such as England and Sweden, where there is a State Church interfering very little with religious freedom. It may be stated however without fear of contradiction that the Founding Fathers provided for Church-State separation under the Federal Constitution because, among other reasons, it was the easiest way out of an extremely difficult situation created by the large number of religious bodies, and the dominance of different denominations in different states, some involving a State Church.

Consequently, as it would have been impossible to get the representatives of the thirteen original states to unite on any one form of establishment, it seemed best to separate Church and State federally, and to let each state decide for itself on any Church connection. Furthermore, there were some delegates who agreed with James Madison and the absent Jefferson[171] that entire religious freedom was the only possible plan in a democracy. The framers of our government took the first step toward their goal in the Constitution of 1787–89,[172] and went much further in the early amendments constituting the Bill of Rights in 1789–91.[173] As we have already seen,[174] some of the states adopted full religious freedom and separation of Church and State prior to the Federal gov-

ernment, and some of their representatives urged the same for the nation as a whole.[175] Other states followed along after the Federal government and were influenced by its provisions.[176]

It is facts such as these that make it difficult to answer by a single word the question, did religious freedom result from Church–State separation in the United States, or did the opposite process prevail? In general, however, it may be said that it was the desire for religious freedom, either as the only workable plan or as theoretically advisable in a democratic state, that early led to the separation of the two powers by the Federal government and by most of the states. Today in the United States the two aspects of the subject are generally considered inseparable and complementary. Furthermore, a democratic republic wishing complete religious freedom demands, both theoretically and practically, entire separation of Church and State, while retaining a friendly and sympathetic relation between them. On the whole, the study of American history shows that this actual separation, especially in the states, was generally the precursor, and always the surest support of public opinion in guaranteeing freedom of conscience and worship.

Fenimore Cooper (1789–1851) is always an interesting commentator on the American scene. Writing a little over a century ago, and considering the problem we have been discussing in this section on the priority of religious freedom or Church–State separation in this country, he goes to the root of the matter:

> It is a mistake [he writes] to believe that the liberality on religious subjects, which certainly exists to so eminent a degree in this country, is the effect of the want of an establishment. On the contrary, the fact that there is no establishment is owing to the liberal institutions, and to the sentiments of the people. You will remember, that the same political right to create establishments is to be found in the state governments, here, as is to be found any where else. *All* power that can belong to governments, and which has not been ceded to the United States, is the property of the states themselves, in their corporate capacities. It is true that most of them have decreed, in their constitutions, that no religious tests shall be known; but it is necessary to remember who have framed these imperative and paramount ordinances. The powers, too, that decreed these limitations can change them.[177]

Section 8. THE HISTORIC LEADERSHIP OF THE UNITED STATES IN THE FIELD OF RELIGIOUS FREEDOM

We shall deal toward the close of these volumes[178] with the influence of the United States on the securing of religious freedom and Church–State separation in other countries. Here we are concerned merely with pointing out that the Constitutional provisions for religious freedom secured in this country from

1787 to 1791 were far in advance of those in any other part of the world, especially when we take into account both state and Federal enactments. In no other nation at that time was there both complete separation between Church and State, and entire religious freedom. France was in the process of securing somewhat similar rights, but under conditions much less favorable to the cause of religion.

In the United States religious freedom was brought about mainly by friends of religion and the Church; in France it was brought about mainly by the enemies of religion and by those more or less indifferent to the Church. In no other Latin country was full religious freedom established. Holland, England, and the Scandinavian countries had a large measure of toleration, but the Church was not independent of the State and those not of the State-favored Church or Churches were in a position of disadvantage. The United States well before the close of the eighteenth century had secured complete religious freedom as far as the Federal government was concerned, and only a few state constitutions had any restrictions or requirements that favored or penalized members of any religious group. Even these, although unfortunate and soon to be eliminated, were relatively minor, and in no case was freedom of worship or propaganda hampered. Their principal effect was to discriminate in a few states, at least as far as the letter of the law was concerned, against Roman Catholics and non-Christians in the matter of holding certain offices.[179] We are therefore dealing in these volumes with a movement of international historical significance: the bringing about, and mainly through the United States, of Constitutional religious freedom, which has been extended to most advanced nations. The order and dates of the principal events which gave us our Church–State separation and religious freedom have been already summarized,[180] and they may be observed further in the table of contents and the table of dates (XXIX).

Part Three

THE ESTABLISHMENT OF CHURCHES INDEPENDENT OF THE STATE AND THEIR ADJUSTMENT TO THE NEW CONDITIONS OF THE REPUBLIC

Chapter X

THE NEW INFLUENCES AFFECTING CHURCHES AND CHURCH–STATE RELATIONS IN THE EARLY DECADES OF THE NINETEENTH CENTURY

Introduction—Growing Nationalism and Western Expansion. The early decades of the nineteenth century were marked by two major factors, the development of a strong national feeling in the United States, and the opening of the West. Both these factors affected the churches, and the churches responded effectively to both.

The development of the new national feeling was in turn due to many factors which indicated that a national vision and a national spirit were taking the place of the old colonial and state lines. Among these—following the adoption of the Ordinance of 1787 and the organization of the Federal government—were the Federal payment of state debts; the chartering of a United States Bank, with branch banks in different parts of the country; the inauguration of a protective tariff and of Federal excise taxes, with their advantages and disadvantages; the purchase of the vast new Louisiana territory; the Western expansion with its strengthening of democracy and enlarging of the national domain; the establishment of a permanent national capital in Washington; and the development of national feeling due to the War of 1812.

The original thirteen colonies did not extend west of the Appalachian Mountains. By 1783, by virtue of the Definitive Treaty of Peace with Great Britain, the territory of the United States had been carried to the Mississippi. In 1787 alone over 900 boats went down the Ohio carrying 18,000 persons, 650 wagons, and 12,000 animals.[1] This was the year when the Ordinance for the Government of the Northwest Territory was adopted—legislation which pointed the way toward ordered settlement, self-government, and religious freedom. It is estimated that by 1790 there were 120,000 people, excluding Indians, west of the Appalachians—most of them descendants of Northern European stock.

In 1792 Kentucky was admitted as a state, having drafted a highly significant constitution recognizing the principle of political equality (excluding slaves) and going even further in this respect than Vermont and Delaware, which the year before had taken what was considered a liberal position. Kentucky decided that all free male citizens who had resided in the state for two

years should enjoy the right of suffrage, and that any lawful elector should be deemed eligible for the office of governor or for membership in the legislature—a long step forward from the property qualifications then characteristic of the East. It was evident that the West was going to cut loose from many of the conservative political traditions of the older colonies. Similar changes would soon take place when the territory contiguous to Kentucky was divided into states under their own constitutions, governors, and legislatures: Tennessee, 1796; Ohio, 1803; Louisiana, 1812; Indiana, 1816; Alabama, 1817; Illinois, 1818; Mississippi, 1819; Missouri, 1821.

The important Louisiana Purchase from France was made in 1803, extending our possessions from Louisiana to near the northwest corner of the present state of Montana, and about doubling our area. In 1818 the northern portions of what are now Minnesota and North Dakota were ceded by Great Britain, and in 1819 Florida was obtained from Spain. In 1845 Texas was annexed; in the following year the claim of Great Britain to the Oregon Territory was abandoned in our favor; in 1848 California and other territory west of the Rocky Mountains were acquired from Mexico; and in 1853 the Gadsden Purchase from Mexico completed what are virtually the present boundaries of the continental United States;[2] Alaska was not purchased from Russia until 1867.

The two tendencies we have indicated—growing nationalism and Western expansion—were closely related. The first developed largely out of the very fact that the West existed, and that it was made up not of a group of territories belonging to separate states—though part of it had been acquired in the eighteenth century by separate seaboard colonies—but that it was all now, thanks to the Ordinance of 1787 and Jefferson's purchase of Louisiana, the possession of a nation which included many diverse states. We will find the interplay of these two factors in almost all the events of the period that we shall outline.

Section 1. THE GREAT REVIVAL OF 1799–1803 AND THE CHRISTIAN EDUCATION OF THE WESTERN FRONTIER

The Christian Church was influenced by the demands of this new situation and responded to them. As early as 1798 the Missionary Society of Connecticut was established. Its preamble shows that among its major purposes was the meeting of the needs of new settlements springing up on the frontier which was being steadily pushed westward. The founders—the General Association of Connecticut, that is, the Congregationalists—stated that they

> consider it a thing of great importance that some charitable assistance be extended to new Christian settlements in various parts of the United States. The salvation of these

souls is precious. The happiness of the rising generation and the order and stability of civil government are most effectually advanced by the diffusion of religious and moral sentiments through the preaching of the gospel.[3]

They also stated that it was one of their purposes to promote "Christian knowledge" in the new settlements, thus laying a basis for the great work of education that was to be developed.

Some other religious bodies bestirred themselves, but, as we shall see later in this section, the great movement for the Christianization of the West was not to become effective until a couple of decades later.

The large additions to the national domain, most of which were followed by extensive colonization, were a challenge to the Christian Church, which it heeded in a heroic way. Its missionaries, thanks largely to the religious impetus created by the Great Awakening of 1740 to 1790 and the Second Awakening or Revival of 1799–1803, which was on a broader scale,[4] had been actively working on the changing Western frontier in considerable numbers since the days of Whitefield. They were actuated by Christian zeal, and worked in the spirit of the Ordinance of 1787 for the government of the Northwest Territory, which was the major basis for controlling the nation's new land in the West. This emphasized the importance of "religion, morality and knowledge" and provided for religious freedom.[5] "The frontier was crude, turbulent, and godless. Evangelical Protestantism, more than any other single force, tamed it."[6] The organized religious forces of the nation responded by starting schools, churches, and benevolent institutions in large numbers. As a result, the Churches mainly provided, for decades, such secondary and higher education as the frontier communities commanded, as well as their best standards of personal and social morality. The impress of the Churches is still noticeably felt in the old "Christian colleges" extending from Oberlin in Ohio to Whitman in Washington, and in the villages and towns of the Middle West. To appreciate the importance of these movements we must remember that at the close of the first third of the last century about a third of the population of the United States was on the frontier.[7] It was this large group that appealed to the imagination of the Christian forces of the East, whose three great centers were Boston, New York, and Philadelphia.

Some idea of the low tide of public and private morality at this time—which helped awaken the Christian leaders to their responsibilities—may be gained from two very different sources. The first is the statement of the Reverend Lyman Beecher (1775–1863) describing conditions in Yale College when the Reverend Timothy Dwight became president in 1795.

Before he came, college was in a most ungodly state. The college church was almost

extinct. Most of the students were skeptical, and rowdies were plenty. Wine and liquors were kept in many rooms; intemperance, profanity, gambling, and licentiousness were common. I hardly know how I escaped. . . . That was the day of the infidelity of the Tom Paine school. Boys that dressed flax in the barn, as I used to, read Tom Paine and believed him; I read and fought him all the way. Never had any propensity to infidelity. But most of the class before me were infidels, and called each other Voltaire, Rousseau, D'Alembert, etc.[8]

The second is from the middle states, where the Presbyterian General Assembly represented the strongest religious force. In 1798 it thus described conditions in the country:

Formidable innovations and convulsions in Europe threaten destruction to morals and religion. Scenes of devastation and bloodshed unexampled in the history of modern nations have convulsed the world, and our country is threatened with similar calamities. We perceive with pain and fearful apprehension a general dereliction of religious principles and practice among our fellow-citizens, a visible and prevailing impiety and contempt for the laws and institutions of religion, and an abounding infidelity, which in many instances tends to atheism itself. The profligacy and corruption of the public morals have advanced with a progress proportionate to our declension in religion. Profaneness, pride, luxury, injustice, intemperance, lewdness, and every species of debauchery and loose indulgence greatly abound.[9]

These disturbing conditions, which showed our national religious life at a low ebb, were due to many causes, but were mainly related to the aftermath of war, political factors, and the dislocations due to the settling of the Western country. Conditions in the Western states were even worse, owing to the relatively crude frontier life, the scarcity of well-established churches, and the lack of the restraining force of traditional Christianity.

The careful student of American social history must be impressed by the many influences for social betterment which developed out of the religious awakening at the turn of the century. The year 1798 or 1799 may be taken as the time of its beginning. The major "revival" lasted until 1803, but its work continued much longer. Henry Adams, writing of the second administration of James Madison (1813–17), says that "Religious interest and even excitement were seen almost everywhere, both in the older and in the newer parts of the country."[10] Its effects are illustrated by the change which took place at Yale in the "revival" of 1802, under the powerful teaching and preaching of President Timothy Dwight (1752–1817).[11] This revival had a profound influence in recreating Christianity as a factor in national life. Dwight became a leader in the campaign against French atheism and indifference, and, facing a real moral crisis in the nation, although not sympathizing with the new democratic revolution, he became an exponent of the "new theology." This, in turn,

helped the democratic cause. He, and many others among the clergy, realized that though Calvin was right in teaching that God was supreme, He could do His work effectively only through willing men, and that the old doctrine of divine election must pass into the background and its implications be broadened. It was as a result of this changed emphasis, strengthened by the rise of Unitarianism and Methodism with their Arminian tendencies, and by other factors, that little by little the Christian world realized that all men who truly sought salvation might attain it. The new prophets laid emphasis not only on a vital faith but on works, and helped the Church to become much more "activist" in outlook.[12] This meant more interest in human efforts to improve the individual and society, and in the end resulted in a Church which could better serve the higher moral and educational interests of the State.

The most extensive results of the new movement in theology and of the revival were seen along the Western frontier.[13] Here the Methodists and the Presbyterians were the leading factors. The camp meeting—a peculiar form of American religious service, which frequently was marked by emotional excesses, including a spirit of religious intolerance—first became known in the winter of 1799–1800 in Kentucky, and from that time on for several years there was a remarkable development of religious interest. In thirty years the Presbyterian Church increased its membership about fourfold, the Congregational churches twofold, the Baptist churches threefold, and the Methodist churches most of all, about sevenfold.[14]

The Methodists, with their emphasis on loyalty to Christ rather than on dogmatic explanations, and on human freedom, were both directly and indirectly highly influential. They made many converts to their own denomination, and helped to modify the rigid views of election and predestination held by Calvin's followers among Presbyterians, Congregationalists, and other groups. This modification, for which John Wesley (1703–91)[15] was mainly responsible, also owed much to Samuel Hopkins (1721–1803), whose theories of a general atonement and of Christ's death for all had an influence on the missionary movement. His *System of Doctrines* appeared in 1793. In it he gave free will a place inside the Calvinistic scheme of things.

The religious movement in the West began in many places before the great missionary societies were established. For instance, Baptist ministers or preachers are found here and there in Kentucky and other parts of the Middle West as early as the 1780's. The Baptists, having been greatly stimulated by the Great Revival, from 1797 on, became specially interested in the needs of the Western settlers about them. In that year the Miami Association of Baptist Churches was established in Ohio. In 1804 we find a Baptist church—probably the first Protestant church—in Missouri.[16] There is record of a Mississippi Baptist As-

sociation in 1806, and of a similar association the following year in Illinois. But these developments were more or less spontaneous and local, as there were powerful influences among the Baptists opposed to centralized authority and highly organized missionary societies with paid missionaries. These "antimission Baptists" succeeded in preventing the sending out of a Western "missionary" until 1811,[17] but ministers on the spot, many of whom had accompanied their people on their migration West from the old states, had been hard at work for a quarter of a century. The contribution of the Baptists to education in the West did not compare with that of Presbyterians and Congregationalists, nor were they as effective evangelists as the Methodists, but they did a highly important work for religion and moral standards among the rough frontiersmen, and in the villages and towns. The typical Baptist preacher of the time had little education, but he was sincere and earnest. He was generally a farmer working on his own land five or six days, preaching on Sunday, and holding occasional weekday meetings and funerals. He was self-supporting and received no regular salary,[18] this practice being largely due to reaction against conditions in their former states, such as Virginia and to some extent Connecticut, where they had seen the bad effects of a ministry supported by the state.

The Presbyterians were also in the field; but unlike the early Baptists had their ministers and pastors sent out as definite missionaries by organizations in the East. When the Declaration of Independence was signed there were already 543 congregations in the thirteen colonies;[19] and by the time of the Treaty of Peace in 1783 they were already becoming the most broadly represented and the most numerous of American Christian bodies. They were probably also—with the nearly related Dutch Reformed Church—the closest rivals of the Congregationalists in the matter of a well-educated ministry. This was due mainly to Presbyterian tradition and to the influence of the College of New Jersey (Princeton). They had the advantage also of being squarely behind the patriotic movement which led to independence, with their great leader, President Witherspoon,[20] the only clergyman to be a signer of the Declaration. They also could count on the devoted membership of the large and responsible group of Scotch-Irish who in 1790 composed about 7 per cent of the entire population of the country.[21] These, being mostly relatively late comers (last three-quarters of the eighteenth century), followed the river valleys to western Pennsylvania and the Appalachian mountain region. They were ideal settlers for the new republic, because, as the most important synod, that of New York and Philadelphia, stated in its pastoral letter of 1783, they had an "almost universal attachment to the cause of liberty and the rights of mankind."[22]

As early as 1779 the synod stated that "it is greatly for the interest of the

church to pay particular attention to the Southern and Western parts of this continent," and to give special heed to the education of youth.[23] Education was so emphasized that Professor Sweet, our most competent authority on the Christianization of the West, says that it made "almost every Presbyterian preacher in the West a school master."[24] This fact becomes highly important as we study the influence of the Church on the State in the frontier regions. The Presbyterians established hundreds of churches and schools and many colleges. The main reasons why the Methodists outstripped them in the number of adherents was because the Methodist circuit-rider system spread the missionary effort farther; their educational qualifications for the ministry were much less rigid; their Arminian theology, as distinct from rigid Calvinism, gave more play to freedom and the joy of living; and their simple evangelistic point of view made them less susceptible to theological controversy and ecclesiastical divisions.

The presbyteries spread rapidly—Redstone, in western Pennsylvania, 1781; Ohio, 1793; Erie, 1801. By 1820 there were eight presbyteries grouped together in the new Synod of Pittsburgh.[25] And a movement parallel to the migration through Pennsylvania was taking Presbyterian missionaries and ministers west from Virginia and North Carolina. In 1783 we find the Presbyterian Church established in Kentucky. Here the Transylvania Presbytery became so great a factor that by 1799 it was divided into three presbyteries.[26] In 1802 the Presbytery of Washington was formed, including churches in southern Ohio; in 1810 that of Miami. By 1818 there were three presbyteries in the Western Reserve, and by 1826 three in Indiana united in a new synod.[27] And so the Western expansion continued, until by 1830 there were about thirty presbyteries west of the Alleghenies.[28]

Among the colleges founded mainly through Presbyterian effort were Transylvania in Kentucky, 1783, a highly influential institution;[29] Blount College (later University of Tennessee), 1794; Jefferson, 1802, and Washington, 1806, colleges united half a century later into Washington and Jefferson, in western Pennsylvania, 1869; Wabash College, Indiana, 1834; and Davidson College, in western North Carolina, 1838.[30] It is hard to overemphasize the influence exerted by these institutions, and the Presbyterian ministers who were generally their presidents, in providing higher education and cultural influences on the frontier. Here was a striking case where the Church aided the State by organizing, supporting, and inspiring the laying of sound educational foundations. It is worth recording that of the fourteen permanent colleges and universities established west of the Alleghenies between 1780 and 1829, seven were founded by Presbyterians and one by joint action of Presbyterians and Congregationalists. Only four of the fourteen institutions were founded by the

state, and all of these were begun under Presbyterian influences.[31] It is clear that as a denomination they were unsurpassed, and probably unequalled, in their educational contribution to the frontier.

The Congregationalists, especially those from Connecticut, were definitely missionary in purpose and also interested in education. They had since the adoption of the Saybrook Platform in 1708 lost some of the extreme parochialism and local independence so often found in early days. This provided for "consociation" in standing councils, and later made it possible for the Congregational and Presbyterian churches to co-ordinate most of their work for the West in the Plan of Union of 1801. The missionary motive was also strengthened by the Great Awakening; and Connecticut became much interested in the moral and spiritual welfare of the tens of thousands of citizens who had moved West, especially to the Western Reserve in northeastern Ohio. Even the legislature of the state, in 1801 and on several other occasions, specially authorized the trustees of the Missionary Society of Connecticut to take up collections

> for the support of such missionaries as they shall from time to time employ in preaching the Gospel in those settlements in the Northern and Western parts of the United States where the ordinances of the Gospel are not established,[32]

and report the results to the General Assembly. The governor was also requested to continue to issue an annual proclamation on the subject—a practice first instituted in 1793, and evidencing the close bond then existing between the state of Connecticut and its Congregational churches.

By 1850 there were 131 Congregational churches in Ohio.[33] But in many ways the most distinctive contribution of Congregationalism to the West was to secondary and higher education. Here, under the Plan of Union, they had much help from the Presbyterians. We think of such ministerial leaders as Manasseh Cutler (1742–1823), founder of Ohio University at Marietta, Ohio, in 1804; Theron Baldwin (1801–1870), founder of the Society for the Promotion of Collegiate and Theological Education in the West, and his fellow Yalensian, Julian M. Sturtevant (1805–86), who led in the establishment of Illinois College; and those who laid the foundations which developed a little later into Western Reserve University, 1826, and Oberlin College, 1833.

It will be noticed that these and similar institutions are almost all in Ohio and states immediately west of it rather than in the more Southern states where the Presbyterians were clearly the leading educational pioneers, with their manse schools, "log colleges," and the representative colleges and universities already mentioned.

The Congregationalists stood for an educated ministry, a dignified church

life, the advancement of Christian education and culture, and an intelligent active interest in the abolition of slavery and intemperance, and in other problems facing the state. The point of view of the leaders of the denomination was well expressed by Lyman Beecher in his *Plea for the West* (1835). He asks, "What is required to secure the civil and religious liberty of the West?" His answer is education, especially higher education under Christian and Protestant auspices. Prayers, tracts, Bibles, were all useful, but most needed were "permanent, powerful, literary and moral institutions." "Education," he stated, "intellectual and religious is the point on which stands our destiny. . . ."[34] It was this conviction that led him in 1832 to take the presidency of Lane Theological Seminary in Cincinnati.[35]

Methodists were, from the standpoint of the broad spread of elementary ideas of religion and morality, probably the most successful of all the denominations on the frontier. The Methodist Episcopal Church came into existence as a separate denomination at a psychological moment (1784);[36] and in some ways the most significant work it ever accomplished was in laying the foundations of Christian faith and life on the Western frontier during the next few decades. The close touch of their preachers with the common man; the relative absence of dogmatism in matters of creed and ecclesiastical organization; the passion for evangelism; the adoption of the highly successful circuit-riding system; the conviction that man has been given of God the freedom to determine his own destiny, as distinct from the extreme Calvinism of so many denominations; the freshness of approach and elasticity due to not being too tied by ancient precedents; the extraordinarily effective leadership of such men as Bishop Francis Asbury (1745–1816), "The Prophet of the Long Road," Peter Cartwright (1785–1872), the "Backwoods Preacher," and William McKendree (1757–1835), the first (1801) general superintendent of the Western Conference, a great preacher and organizer; their active leadership with the Presbyterians in the great Western revival of 1801 centering in Cane Ridge, Kentucky; their emphasis on gospel hymns as an expression of Christian conviction and experience—all these made Methodism peculiarly fitted to meet the needs of the frontiersman.

Of these factors perhaps the circuit riders were the most significant. They were well fitted to the needs of rural communities which could not support settled ministers. The circuit rider covered often one or more states, going from place to place on his faithful horse in all kinds of weather—baptizing, marrying, teaching, counseling, preaching, distributing religious literature from his full saddlebags, organizing Sunday schools and churches, administering informal justice, and in other ways advancing the cause of personal and social morality. He generally visited each place on his circuit once a month, and his

visits were community events. The Federal government and the state of Oregon have paid deserved tribute to these pioneers of civilization; the former by sanctioning the fine statue of the Reverend Francis Asbury (1745–1816), the most influential of the group, on a prominent site in the capital of the nation; the latter by erecting "The Circuit Rider" in front of the Oregon capitol. In the last decade of the eighteenth century and the first decade of the nineteenth, Asbury, the most famous of all of these early Christian pioneers in our frontier communities, travelled every year over five thousand miles by horse and primitive conveyance, supervising the Methodist work from Maine to Georgia and well into the West. His *Journals* give an indelible picture of courage, missionary zeal, and helpful activities. He tells us, near the close of his life, that he had probably crossed the Allegheny Mountains not less than sixty times—a striking evidence of his devotion to the missionary cause.[37] The West would be a less desirable place to live in today if it had not been for his labors. He and scores of his circuit riders preached a gospel well fitted to the time and place—free will and free grace—the responsibility to God of the sturdy pioneer who was master of his own destiny. They helped to create the vigorous democratic life of the Middle West which was to play so large a part in our American history.

The late President Theodore Roosevelt (1858–1919) has given us a striking description of frontier Methodism and its preachers. He said:

> . . . Its essential democracy, its fiery and restless energy of spirit, and the wide play it gave to individual initiative, all tended to make it peculiarly congenial to a hardy and virile folk, democratic to the core, prizing individual independence above all earthly possessions, and engaged in the rough and stern work of conquering a continent. . . . The whole country is under a debt of gratitude to the Methodist circuit riders, the Methodist pioneer preachers, whose movement westward kept pace with the movement of the frontier, who shared all the hardships in the life of the frontiersman, while at the same time ministering to that frontiersman's spiritual needs and seeing that his pressing material cares and the hard and grinding poverty of his life did not wholly extinguish the divine fire within his soul.[38]

Such were some of the characteristics of the work of the four Protestant denominations which played the largest part in carrying religion and some ideas of morality and education to the early West. They differed in many points, but in at least one respect they stood as a unit—emphasis on the vital necessity of Christianity to the new states and their people.

Other churches also played an important part—the Roman Catholics,[39] especially through their earlier Indian missions and their work from such centers as Bardstown, Louisville, Cincinnati, and Detroit.[40] From Bardstown, the mother see of the West, a highly respected, effective, and spiritually-minded

Sulpician missionary bishop, the Right Reverend Benedict Joseph Flaget (1763–1850) from 1811 on carried on his work not only in Kentucky and Tennessee, but also in all the region to the north and northwest. Cincinnati became an independent diocese in 1821, the first bishop, the Right Reverend Edward Fenwick (1768–1832), occupying at the start a "log cathedral" in the outskirts of the city; and his successor, the well-known John Baptist Purcell (1800–83), through Mount St. Mary's of the West, made the city the main training ground for Catholic priests on the Western frontier. Cincinnati became an archiepiscopal see in 1850, while the vigorous Purcell—a strong supporter of the Union cause—was recognized as the strongest factor in building up the Roman Catholic Church in the states beyond the Ohio. Detroit was another early center. Just as the Cincinnati Diocese was detached from Bardstown, so Detroit was detached in 1833 from the Ohio city. But before this time it had played an important part in maintaining Christian ideals in the West, especially through St. Anne's Church, established in 1701, and consequently the mother church of the Northwest. It is specially identified with the remarkable services, from 1796 on, of Father Gabriel Richard (1767–1832), famed for being the only priest who has sat in the House of Representatives in Washington. He was one of the most remarkable and influential of frontier clergymen, a man whose educational work and other public services are described in another section.[41]

Such work of Roman Catholic Western pioneers was highly significant, but during the early decades of the republic their clergy were generally too engrossed in effecting their national organization, adjusting it to American conditions, and caring for the urban sections of the East, which were receiving large immigration from Europe,[42] to carry on the vigorous type of missionary campaign in the West which we find later. Indeed, the Church, under the leadership of Archbishop Hughes, was trying to hold immigrants in the Eastern towns and cities, where they could be better cared for by the relatively small number of priests available; hence the Western states, and especially their rural sections, were neglected. However, much was accomplished under difficult circumstances in the central West, which had not, prior to the turn of the century, been much affected by early Catholic influences either from Louisiana in the South or Canada in the North. It was sufficient to show that the Church could, though with some difficulty, adjust itself to the American Constitutional provisions for separation of Church and State, and to the parity of all law-abiding religious groups in the eyes of the State.

The Disciples of Christ[43] have been another important factor in the West, but this denomination did not come into existence until later, and there were many other religious bodies which rendered service which cannot be dealt with separately here.

Professor W. W. Sweet (1881–) of the University of Chicago, who has studied the early records of the Protestant churches of the West more widely than any other scholar, gives this graphic picture of their contribution to the maintenance of public order and the building of Christian civilization:

A random turning of the pages of any of the old record books of the early frontier churches will soon convince one that the church was a large factor in maintaining order in these raw communities. Discipline was meted out to members for drinking, fighting, harmful gossip, lying, stealing, immoral relation between the sexes, gambling and horse racing. Even business dealings and intimate family affairs, such as the relation between parents and children, were considered matters for church discipline. In the region south of the Ohio particularly all the churches had slave members and the churches watched over the slaves with as much care as over the white members, and in some cases the slave members were permitted a voice in church matters.[44]

Not only did the Church influence the West, but the democratic life of "the frontier" had a profound influence on religion in this country. It resulted in several very characteristic American denominations, of which the Disciples of Christ was probably the most characteristic; was responsible for the camp-meeting movement; encouraged evangelism and the evangelistic attitude; strengthened the movement to democratize church administration; and in many other ways affected American church life.

But the encouraging beginnings in the West under revival and denominational influence needed to be extended, made permanent, and stabilized. This conviction was shown by the establishment in 1797 of the Berkshire and Columbia Missionary Society "to propagate the gospel in the new settlements in this country and among the heathen";[45] in 1798 of the Missionary Society of Connecticut; and in 1802 of the Western Missionary Society, which had its headquarters in Pittsburgh and was interested both in frontier settlers and the Indians.

From 1810 on, a group of religious and religious-educational societies of national significance developed, influenced by the new Christian zeal and sense of responsibility stimulated by the revival. The first of these was the American Board of Commissioners for Foreign Missions, founded in 1810 under Congregational leadership but actively supported also by the Presbyterians until they formed their own missionary society in 1837. It has continued to this time one of the most useful and honored of American religious societies, but as its main work was the sending of missionaries to other parts of the world it concerns us here only because in its early days it included the American Indian in its scope, and because the development of interest in the missionary task of the Church then, as always, greatly stimulated the development of church work

at home. Other missionary movements followed. For example, in 1814 the Baptists organized a missionary society, which in 1846 had its name changed to the American Baptist Missionary Union.

It was not, however, until the War of 1812 was over (1815) that the new religious impetus had an opportunity to express itself effectively in various social forms, and on a broad scale. As we enumerate the more important national societies formed, we need to remember that they were in almost every case preceded by a few years by state or city societies with the same objectives. All of them were directly concerned to improve conditions in the United States, especially to meet the situation on the frontier, where, according to the reports of travellers, religious knowledge and traditions were mainly marked by their absence. Social and moral standards were low there, and not fitted to influence future generations for good.

The work of these national societies was effectively prepared for by the sending out in 1812–13 by joint action of the Missionary Society of Connecticut (1798) and the Massachusetts Missionary Society (1799) of two ardent young ministers, John Freeman Schermerhorn (1786–1851) and Samuel J. Mills (1783–1818), who published in 1814 *A Correct View of that Part of the United States which lies West of the Allegheny [sic] Mountains with regard to Religion and Morals.* Their work was highly influential in laying sound foundations for the missionary and educational work which followed in the Mississippi Valley. It stimulated the old state societies to new efforts and greatly helped the founding of new national societies to meet the needs of the West, a work through which the Church rendered an unusually important service to the State.

We shall leave to a later section[46] the enumeration of charitable and social-welfare movements which arose about the same period, but which had no direct bearing on meeting the religious and educational needs of the West. In the latter category the following played an important part—the dates being those of organization:

1815—American Education Society. The purpose of this society was mainly to aid candidates for the Christian ministry and to help support them in needy places in the West.

1816—American Bible Society. This organization, which is still highly influential, had as one of its major objectives to give the Bible to people in the new states of the West, where it was found that the percentage of families with Bibles, with all that they meant in the way of religious and moral culture, was extremely small. It sent colporteurs through the West giving tens of thousands of people in scattered communities the book which more than any other in-

fluenced the lives of many Western statesmen, such as Abraham Lincoln. In 1829 the society undertook a campaign to supply a Bible to every destitute home in the United States.

1817—United Foreign Missionary Society (later absorbed by the American Board). This combined the efforts of several societies which included the Indians in their field of work. It was supported especially by Congregational, Dutch Reformed, and Presbyterian churches. In the same year the General Missionary Convention of the Baptist denomination began work among the Indians, to be followed two years later by the Methodist Episcopal Church.

1817–1827—School at Cornwall, Connecticut, for training Indians, Negroes, Hawaiians, etc., as missionaries to their own people.

1820—Protestant Episcopal Board of Missions.

1822—American Society for Promoting the Civilization and General Improvement of Indian Tribes within the United States.

1823—American Tract Society—the expanded New England Tract Society (1814). This society issued in large quantities carefully prepared religious and moral tracts designed to meet the elementary spiritual needs of men and women. Its publications were the only reading matter on many a Western farm.

1824—American Sunday School Union. This brought together various Sunday-school societies in a national movement to develop religious instruction for the young.

1826—American Home Missionary Society. This interested itself in the supporting of Protestant pastors and churches in the newly settled regions of the country. It was the principal agency in carrying out the Plan of Union of 1801 between Presbyterians and Congregationalists for work on the frontier. The Plan lasted until 1837.

1843—Society for the Promotion of Collegiate and Theological Education in the West.

The last-named society made a specially notable contribution. Its Illinois Band of seven Yale Divinity School men, formed in 1829, had a deep influence on the state of its choice and helped found Illinois College. Similarly, the Iowa Band of eleven men formed at Andover Theological Seminary in 1843 did Christian work of large significance and was instrumental in founding Iowa, now Grinnell, College. The society was formed mainly under Congregational influences, but also had considerable support from Presbyterians. Its missionaries were generally above taking a narrow denominational point of view, and proved themselves useful not only as ministers but as promoters of education and good citizenship. Their service in advocating the antislavery cause was specially important. During the Civil War the society's supporters maintained, with some justice, that their work had contributed effectively to the saving of

the Union through "the loyalty of its right-hand power, the Valley of the Mississippi."

We claim, as one of the blessed results of our Home Missionary work, and as a most striking proof of its value, that it has so enlightened the men of the great West, that not less than two hundred thousand of them are now fighting the battles of their country. But for such Gospel light as has been thrown upon their minds, such patriotic emotions would not have been theirs, and the country, in its perils, would not have had them for its defenders. We have sown bountifully, and now bountifully are we reaping.[47]

Such societies as we have named[48] not only rendered a great service in the field, especially the West, but also in the East, by drawing together for their annual meetings many of the leading statesmen, philanthropists, and clergymen of the nation. They created a spirit of co-operation which did much to encourage nationalism and which would probably have grown from strength to strength had not the acute phases of the slavery issue arisen to destroy the growing unity.

These societies, in which Congregationalists and Presbyterians took a specially important part, were deeply interested in serving the new West, and almost all had a twofold purpose—educational and religious. They stood for that ideal of Christian education which became a marked characteristic of so many of the colleges of the region and which remains noticeable today. This ultimate double goal is well expressed in an article in the *Quarterly Journal of the American Education Society* in 1828. It explains their purpose to be assistance

in planting among our new settlements the institutions of learning, and the ordinances of the gospel. . . . More schools and colleges efficiently conducted, and a larger number of educated ministers of the gospel, and a healthful tone of moral feeling, are, therefore, wanted at the West. Christians must use their utmost exertions to plan the institutions of learning and religion in the Western States. . . . And to this end *educated* ministers must be sent out; tracts, religious newspapers, and above all the Bible must be widely circulated. And all this must be done by the present generation, or the golden opportunity will be lost forever. . . . We want to see a public sentiment made "vital in every part" by the all-pervading influence of the religious principle, . . . to develop intelligent, industrious, and virtuous freemen.[49]

They foresaw what Professor Frederic J. Turner (1861–1932) of Harvard was to emphasize three generations later, that the frontier was the determining factor in American history.[50] As a contemporary essayist wrote:

In a little more than twenty years, therefore, the Western States will have a majority in Congress; and in a little more than fifty years that majority will be overwhelming.

Of course, they will be able to control all the measures of the general government which are of great material importance.[51]

These were prophetic words indeed, representing the convictions of the group of Christian ministers such as Ezra Cornelius, Leonard Bacon, Jeremiah Evarts, and Lyman Beecher, whose names are found as leaders in so many of these societies. Most of them realized full well, and increasingly as the years passed, the need of developing public education under state auspices, but their main concern in the educational field was to provide secondary schools and colleges of a liberal-arts character, with definitely Christian foundations.

Some idea of the fire and conviction of these early agencies for Christianizing the West may be seen in a statement written by Professor Austin Phelps (1820–90) of Andover in 1885 as part of the introduction to Josiah Strong's *Our Country:*

Those now living who were in their boyhood then, remember well how such men as Dr. Lyman Beecher, of Ohio, and Dr. Wm. Blackburn, of Missouri, used to return from their conflicts with the multiform varieties of Western infidelity, to thrill the hearts of Christian assemblies at the East with their pictures of Western greatness, and Western perils. Those were the palmy days of "May Anniversaries." The ideas which the veterans of the platform set on fire and left to burn in our souls were three. The magnitude of the West in geographical area; the rapidity with which it was filling up with social elements, many of them hostile to each other, but nearly all conspiring against Christian institutions; and the certainty that Christianity must go down in the struggle, if Eastern enterprise was not prompt in seizing upon the then present opportunity, and resolute in preoccupying the land for Christ. Again and again Dr. Beecher said in substance on Eastern platforms: "Now is the nick of time. In matters which reach into eternity, now is always the nick of time. One man now is worth a hundred fifty years hence. One dollar now is worth a thousand then. Let us be up and doing before it is too late."[52]

A significant characteristic of these societies was the prominence in them of Christian laymen. The Reverend Lyman Beecher (1775–1863) tells in his *Autobiography* about a meeting in New Haven in 1812 when clergy and laymen met together to promote reform.[53] He says that the meeting of the laity with the clergy for a purpose of this kind was something quite new in Connecticut. This is undoubtedly true, and the co-operation it led to between the two groups was to become one of the finest features of American Christianity. In colonial days clergy are occasionally found serving also as physicians and taking a prominent part in public life, but the reverse seldom happened. The laity then left to the clergy the responsibility for leadership in all matters that had to do with the Church and its advancement. Now, however, with the separation of Church and State under the Constitution and the rise of

democracy, the layman took a much larger part in such matters. We find the names of well-known laymen reappearing constantly in the board of managers of these societies, such as John Jay (1745–1829), Chief Justice of the United States; Arthur Tappan (1786–1865), the antislavery leader; Elias Boudinot (1740–1821), who had served as chairman of the Continental Congress; and Anson Greene Phelps (1781–1853), a Christian merchant of New York. In other words, the coming in of more lay leadership in the work of the Church, such as has recently happened in England—as the Church of England has been given a larger degree of self-government and as the ideals of democracy have expanded—took place in the United States shortly after the founding of the republic. It is noticeable, for instance, that it was only after the new government was established, namely, in 1792, that any layman was elected a Fellow of Harvard University; and it was in the same year that the state legislature of Connecticut first provided for representation of laymen on the corporation of Yale University.

It will be seen from the above that during the twenty years from the close of the War of 1812 on, a group of national interdenominational movements arose which were of large significance from the point of view of American religious and social history. Their headquarters were almost all in New York and Boston, although one or two were in Philadelphia. In New England the Congregationalists, under the Reverend Samuel John Mills (1783–1818), "the father of foreign missions in America" and active in founding several of these societies, were the effective leaders. In the middle states generally the Presbyterians took the lead, although Methodists and other evangelical bodies cooperated with them. Without exception they were led by deeply earnest Christian men, with the majority of their boards of directors in most cases composed of ordained ministers. The significance of these societies can be understood only as we realize that this was a period of Western expansion and that it was vitally important that the Methodist circuit riders and various other home missionaries should be supported in every possible way so that the frontier sections of the country should grow up with Christian ideals.

Alexis de Tocqueville (1805–59) saw this clearly. Commenting on the influence of religion in maintaining democracy in America, and on the developments in the Midwest as he observed them in 1831–32, he wrote:

> I have known of societies formed by the Americans to send out ministers of the Gospel into the new Western States to found schools and churches there, lest religion should be suffered to die away in those remote settlements, and the rising States be less fitted to enjoy free institutions than the people from which they emanated. . . . if you converse with these missionaries of Christian civilization, you will be surprised to find how much value they set upon the goods of this world, and that you meet with

a politician where you expected to find a priest. They will tell you that "all the American republics are collectively involved with each other; if the republics of the West were to fall into anarchy, or to be mastered by a despot, the republican institutions which now flourish upon the shore of the Atlantic Ocean would be in great peril. It is, therefore, our interest that the new States should be religious, in order to maintain our liberties."[54]

This contemporary comment by an intelligent foreign student of American affairs is significant. It explains also the special activities of the Protestant Churches, for their feeling at that time was distrustful of the effect of the spread of Roman Catholicism on American political ideals.

There was much emulation, and some rivalry, among the different denominations to accomplish their purpose; also, underlying it, as we shall see in a later section,[55] was the struggle between Protestant and Catholic to gain the upper hand—each for conscientious reasons. Lyman Beecher's *A Plea for the West,* first published in Cincinnati in 1832, may be taken as a landmark of this great movement.

Probably the American Church has never made a greater contribution to the State than it did in the quarter century beginning with the close of the War of 1812 by laying firm Christian foundations in the Mississippi Valley.[56] For this the philanthropists of New York and Boston, the ministers of New England and the middle states, and the Methodist circuit riders and other missionaries in the West were mainly responsible.

To catch the spirit of these Christian missionaries, to realize the hardships they encountered, and to appreciate the firm foundations they laid for the new states one must turn to such contemporary records as the *Journals* of Francis Asbury, Methodist, published in 1853[57] and already mentioned; the *Recollections of Ten Years passed in the Valley of the Mississippi* (1826) by the Reverend Timothy Flint (1780–1840), Congregationalist; and the *Life, Letters and Travels of Pierre Jean De Smet* (1801–73), Roman Catholic, published in 1905.[58] Such books as these describe the laying of the foundations of Christian civilization on the frontier. Others equally significant might be named, but these represent three different denominations and types of influence, covering almost without a break the time from the formation of our government to Reconstruction days after the Civil War. They also represent the Western trend from an Appalachian center to the valley of the Mississippi, and later to the plains and mountains of the Far West.

The relation between the separation of Church and State in this country and the evangelization of the West is important. The passage of the First Amendment to the Federal Constitution, ratified in 1791, had, as we have

seen,[59] a powerful influence on the new states, and this with the Ordinance of 1787 determined the prevalent religious freedom in the now opening Western country. Professor Goodycoontz, in his *Home Missions on the American Frontier,* puts this situation clearly:

> . . . Thus at a time when the various denominations were preparing to extend their influence into the West through home missions they were assured a free field and equality of treatment so far as state interference was concerned. Furthermore, the abolition of taxation for religion meant dependence on voluntary church support. It was fortunate that it was so; it is not likely that any state church would or could have assumed the burden of following the pioneers with Christian institutions when they began to swarm over the whole of the Mississippi Valley. . . . The problem of christianizing the trans-Allegheny West called for a system better calculated to develop a feeling of responsibility throughout the churches than one in which it was the business of the state.[60]

The part played by the Christian Church in laying the foundations for public education in the West was one of its greatest contributions to the republic, and it began in earnest in this period. The Church, both Protestant and Catholic, had done some previous work in educating the Indian, and the pastor in early pioneer communities had often taken on the duties of the teacher. For example, it is known that the first school in Kentucky was in the home of a Presbyterian minister, the Reverend David Rice (1733–1816), and such examples can be found in many communities in Ohio and other parts of the West; but the organized work for public education under Christian auspices did not become effective until the foundation of the national missionary organizations in the decade beginning in 1815. The Roman Catholic Church was still largely engrossed in meeting the needs of the small Catholic groups and the new immigrants on the seaboard, but Protestantism was strongly enough entrenched there to take up the work of Christian education on a large scale in the West. There its influence was primarily in providing the Bible and an elementary literature for school work; in the establishing of schools, academies, and colleges; and in giving aid to the public-school movement. We must always have in mind that the West, prior to the Civil War, was settled almost entirely from the East, and not directly from Europe. This means that the pioneers carried with them the educational traditions of the seaboard, with its interest in education generally closely related to the basic religious tradition. This was helped by the Ordinance of 1787 for the government of the Northwest Territory, which became the basic law for all the older states west of the Allegheny. It contained an impressive statement already quoted indicating the importance of closely related religious, moral, and mental education.[61] Further-

more, the preamble declared that the ordinance had as one of its purposes "extending the fundamental principles of civil and religious liberty."

These fundamental declarations, together with the grants of land made for educational purposes by Congress, meant that the new states were to lay great emphasis on education, and that religion and religious freedom were considered of basic importance.

A few examples will show that these purposes were carried out, the reader being referred for further data to the various volumes by Professor William Warren Sweet on *Religion on the American Frontier.*

The state of Ohio, the earliest of the Western states, is typical. Marietta was the first settlement of the Ohio country, its ideal being a "second New England." A year after its founding, Manasseh Cutler sent out two hundred dollars to pay the schoolmaster and the minister, and it is quite possible that the same man served as both. Academies, whose boards of trustees were chosen mainly from leaders in the churches, began to be established in 1802. Public school laws, originally based on those of New York, were adopted in 1821 and 1825. In 1837, responding to the efforts of Horace Mann[62] in Massachusetts, a state superintendent of public instruction was chosen by the legislature—Samuel Lewis (1799–1854), a man of many talents and occupations, who was a licensed local preacher in the Methodist Church. Furthermore, a distinguished Congregational minister and scholar, the Reverend Charles E. Stowe (1802–86), was sent to Europe by the state to report on elementary education. The early colleges were mainly founded or developed under denominational auspices, or with denominational support, such as Ohio University, 1804, Presbyterian; Miami, 1809 (opened as a college 1824), Presbyterian; Kenyon College (originally a theological seminary), 1824, Episcopalian; Western Reserve College, 1826, Congregational; Oberlin Collegiate Institute, 1833, which developed into Oberlin College, undenominational, but actively Christian; Marietta College, 1835, the outgrowth of a school established as early as 1797, Congregational; Ohio Wesleyan University, 1844, Methodist; Granville College (now Denison University), 1845, Baptist, an educational foundation going back to 1832; Wittenberg College, 1845, Lutheran.

It is interesting to note that in the early days many of these and similar colleges received grants from the state and that similarly some of them have since become state institutions.

Cincinnati was the center of much early educational, publishing, and missionary activity, not only for the state of Ohio but for the West as a whole. From it as a center much literature, prepared by the national religious and educational societies of the East already mentioned, was distributed. Here in 1829 the Pres-

byterians established the Lane Theological Seminary, which did yeoman service in training missionaries and pastors for the West. Here also William Holmes McGuffey (1800–1873) became President of Cincinnati College in 1836, and began his remarkable career in providing the *Readers,* which succeeded *Webster's Spelling Book,* as the foundation stone of most Western public school education, emphasizing thrift, morality, patriotism, and respect for religion.[63]

Other states show much the same story: the large influence of the Churches on education through the founding of institutions and the providing of educational leadership in the days when public education was not yet strong enough to stand alone. We think of such institutions as Illinois College, 1829, Congregational and Presbyterian; Wabash College, Indiana, 1832, Presbyterian; Notre Dame University, 1842, Roman Catholic; Northwestern University, 1851, Methodist Episcopal. Even several Western state universities had clergymen for their first presidents, conspicuous examples being Michigan and California. In this connection, it is interesting to note that in 1829, of the forty-three recognized colleges and universities then in the United States, all except four—Harvard University, Western University at Pittsburgh, and the state universities of South Carolina and Virginia—had clergymen as presidents or as heads with other titles.[64] It was men trained in these colleges who laid the foundations of education, at least of secondary and higher education, in the West.

It should also be remembered that, in some of the states of the West, Catholic missionaries opened the first schools, as for example, in Detroit, Michigan, in 1755, and at Vincennes, Indiana, in 1793.

A later section will carry the story of the Church and Western education into the post-Civil War period.[65]

Section 2. THE ALIEN AND SEDITION ACTS OF 1798

The Alien and Sedition Acts, put through Congress by the Federalist party at a time when war was threatened with France, have generally been considered by historians as due mainly to trying to insure a Federalist victory at the polls against the Jeffersonian Republicans, and thus saving the country from the influence of radical French political thought. This was doubtless the major cause, but underlying it was the fear of the weakening of Protestantism through the increasing Irish Catholic immigration on the one hand, and on the other through the free views of religion brewing in France as a result of the teachings

of science and of reaction against what seemed to many the rigid conservatism of the Roman Catholic Church.

The first of the new laws, passed June 18, decreed that aliens must reside in the country fourteen years before naturalization, instead of five years, and that they must declare their intention of becoming citizens five years in advance. This was "An Act concerning aliens," and was repealed in 1802 by the Jeffersonian Republicans.

A second act, that of June 25, which continued two years but was not renewed, gave the president the power to deport aliens if he thought them dangerous to the public peace. This extreme measure, whose constitutionality and wisdom were both debated, passed Congress by a close vote but was not put into effect.[66]

The third act, that of July 6, empowered the president in time of war to arrest, imprison, or banish aliens with whose country the United States was at war. It was not enforced, but so frightened many aliens that they left the country.

In addition to these alien acts was the the Sedition Act of July 14, which made it a high misdemeanor "unlawfully to combine and conspire" to oppose legal measures of the government, to interfere with any officer in the discharge of duty, or to engage in or abet "insurrection, riot, unlawful assembly or combination," the penalty being not over $5,000 and imprisonment up to five years. The law also made the publication of false or malicious writings against the United States, the president, or Congress, punishable by fine and imprisonment. It has generally been considered that the Sedition Act was both unwise and unconstitutional, though ten citizens, all Antifederalists, were fined and imprisoned under it.[67]

When Jefferson came to power he pardoned all sufferers under the Act, adding in a letter written on July 22, 1804:

> I discharged every person under punishment or prosecution under the Sedition Law, because I considered and now consider that law to be a nullity as absolute and palpable as if Congress had ordered us to fall down and worship a golden image.[68]

This has the true Jeffersonian ring, and reminds us of the well-known words incised on the new Jefferson Memorial in Washington: "I have sworn upon the altar of God eternal hostility against every form of Tyranny over the mind of man." He was convinced that the enforcement of the Sedition Law would be a manifestation of such tyranny.

The passage of the Sedition Law signed the death warrant of the Federal party and brought to power the Jeffersonians. This was to have in due time its broad influence in removing the vestiges of State-Churchism which remained in Massachusetts, Connecticut, and some other states.

As is well known, the Jeffersonians raised strong protests against these four

laws, their most influential memorials being the Virginia Resolutions and the Kentucky Resolutions, the former written by James Madison,[69] the latter by Thomas Jefferson,[70] and adopted in 1798 and 1799.

We shall see in the next section how the Protestant Churches vigorously opposed Jeffersonianism. They believed that Jefferson was a freethinker, unsympathetic with historic Christianity, and in close touch with the radical philosophers of France. They also were afraid because he was gaining increasing support from the Irish Catholic "rabble" that was beginning to become a political factor of importance in our large cities.

From the standpoint of these volumes the Alien and Sedition Laws are important events in the development of "Nativism" and "Know-Nothingism" in this country. They represented the conservative Protestant antagonism to the influence of Latin countries and to the foreigner when not a Protestant. The Federalists became to a large extent the early representatives of the "Native Americans."

A recent Roman Catholic writer has brought out the fact that later Know-Nothingism had its genesis in the prejudices nursed by the Federalists against foreign-born citizens and in their intolerance of their fellow citizens professing the Roman Catholic faith. He traces this back to the Alien Acts.[71]

A characteristic contemporary expression of Protestant opinion on the subject is one of the many letters sent to the president at this time.

> We, the Congregational ministers of Massachusetts, met in annual convention, feel ourselves called upon, as men, as American citizens, and as public professors and teachers of Christianity to address you at this solemn and eventful crisis.
>
> While the benevolent spirit of our religion and office prompts our fervent wishes and prayers for the universal extension of rational liberty, social order, and Christian piety, we cannot but deeply lament and firmly resist those atheistical, licentious, and disorganizing principles which have been avowed and zealously propagated by the philosophers of France,—which have produced the greatest crimes and miseries in that unhappy country, and, like a moral pestilence, are diffusing their baneful influence even to distant nations. From these principles, combined with boundless avarice and ambition, have originated, not only schemes of universal plunder and domination, but insidious attempts to divide the American people from their rulers and involve them in a needless, unjust, and ruinous war; arbitrary and cruel depredations on their unoffending commerce; contemptuous treatment of their respected messengers and generous overtures of peace; rapacious demands and insulting threats in answer to the most fair and condescending proposals. . . .[72]

President Adams' reply has been preserved:

> This respectful and affectionate address from the Convention of the clergy of Massachusetts, not less distinguished for science and learning, candor, moderation, liberality

of sentiment and conduct, and for the most amiable urbanity of manners, than for unblemished morals and Christian piety does me great honor, and must have the most beneficial effects upon the public mind at this solemn and eventful crisis.

To do justice to its sentiments and language, I could only repeat it sentence by sentence and word for word: I shall therefore confine myself to a mere return of my unfeigned thanks.[73]

The opinion of the conservative Protestant ministers quoted might well be considered a contemporary pronouncement if Soviet Russia is substituted for France. Both represent the same fear of foreign ideologies and influences, which was the major reason for the Alien and Sedition Acts. We may recognize that there was ground for some fear without approving the drastic solution adopted, which at least in the case of the Sedition Act, although upheld by lower Federal courts, never before the Supreme Court, is generally considered today as in some respects unconstitutional. The group of acts taken together troubles the conscience of those interested in maintaining the freedoms of the Bill of Rights, and the fact that it was a major cause of the defeat of the Federalists is not without significance.

Section 3. THE INFLUENCE OF JEFFERSONIANISM

It is difficult for us at this distance of time to appreciate the alarm felt in conservative Church circles over the re-entrance of Thomas Jefferson into public life after his retirement to Monticello, by his election to the vice-presidency in 1796 and the presidency in 1800. This was especially true in the New England states of Connecticut and Massachusetts, where the Congregational Church was still established and where Jefferson was looked upon as representing the ideals of the French Revolution—radicalism in matters political and social, and atheism, or at least agnosticism, in religion.

Most of the Thanksgiving Day sermons preached in Congregational churches in Massachusetts from 1795 on for a few years denounced Jeffersonianism, and frequently by contrast praised the Federalist party. This was also shown in a marked way in the convention sermons of 1798 and 1799. Connecticut was a near rival to its sister state in this respect. At least one of its well-known Congregational ministers—the Reverend Azel Backus (1765–1817)--was arrested and prosecuted by the Federal authorities for an alleged libelous attack on the president. This was in 1807, and it caused much ill feeling. It was about this time that the Reverend David McClure (1748–1820) wrote in his journal that democracy in America had more of an "immoral and disorganizing character" than in other States.[74] The detailed story of Connecticut's throwing over the

Establishment in 1818 with the active help of the Jeffersonians has been told in another chapter.[75]

The Reverend Timothy Dwight (1752–1817), President of Yale University, a staunch defender of the old "standing order," and often referred to as the "Pope of Connecticut," was particularly virulent in his attacks on Jefferson. Dwight identified him very definitely with French Jacobinism. His baccalaureate address to the students of Yale in 1797 and his Fourth of July sermon in New Haven in 1798, entitled "The Duty of Americans, at the present Crisis," were characteristic. They show him as violently opposed to Jeffersonianism with its sympathy for much in French radicalism, as his successor of today in a conservative college or church position would be to Russian Communism of the Marxian type. He believed that it implied atheism, personal immorality, public license, and all kinds of social disorder. "Shall our sons," he exclaimed, "become the sons of Voltaire and the dragoons of Marat . . . ?" The reasons for his attitude are explained in a letter written in 1844 by Judge Roger Minot Sherman (1773–1844) of the Supreme Court of Connecticut, a tutor at Yale at the time of Dwight's presidency:

> He always espoused the principles of the Federalists, in opposition to those of the school of Jefferson. . . . He viewed the contest as a struggle between the friends of law and order, on the one part, and those, on the other, who favoured the licentiousness of the French Revolution. He was a strong friend of liberty; but considered law, constitutionally enacted and justly administered, as its only preservative; and he regarded that freedom which elevates the people above the laws made and administered by their own officers, as its most dangerous enemy.[76]

Alexander Hamilton was far from the theological point of view of the Puritans, and, as is well known, ultimately threw his support to Jefferson to prevent the election of Aaron Burr; but even in the New York state election of 1800 he referred to his great rival as "an atheist in religion and fanatic in politics"[77]—a combined abusive epithet often found in one form or another in the campaign literature of the time.

President Martin Van Buren (1782–1862), writing in the middle of the century, gives similar evidence. He says that there were persons living who remembered the ministerial tirades against Jefferson, whose success would mean the "burning of Bibles, the prostration of religion and the substitution of some Goddess of Reason."[78]

Next to the orthodox Congregationalists of New England, the Episcopal leaders in Virginia were among Jefferson's most bitter opponents, although after the first decade of the nineteenth century the Episcopal clergy of Connecticut

supported his party as being the only way in which they could break the strangle hold of the established Congregational Church, always in close alliance with the Federalists. In other religious bodies there was considerable opposition to him because of his radical theological and social views; but as he was an ardent advocate of religious freedom, which he had done so much to secure in Virginia, many dissenting sects, including especially the rank and file of Baptists and Methodists, gave him support in the hope of disestablishing the Church. A western pioneer Methodist saddlebag preacher, himself a Jeffersonian, referring to the early part of the nineteenth century, wrote:

> The great mass . . . of the Methodist church and her adherents were Republicans. Every convert to Methodism, in those times became a Republican if he was not one before. . . . On the other hand Calvinism and Federalism were yoked together. . . .[79]

Lyman Beecher (1775–1863), a strong supporter of the status quo in Connecticut, was well aware of Jefferson's influence on dissenting religious groups. He records in his *Autobiography* that democracy in its early days included "nearly all the minor sects, besides the Sabbath-breakers, rum-selling, tipling folk, infidels, and ruff-scuff generally, and made a deadly set at us of the Standing Order."[80] This was partly true, but he fails to add that in addition to these groups Jefferson attracted many political and social idealists who had an important contribution to make to American life.

It was largely due to the influence of Jefferson's views that Massachusetts in 1800 repealed laws, passed in 1780, for the support of worship and the settling of ministers, and later, when the Republicans (Jeffersonians) were in power, they adopted the Religious Freedom Act of 1811, by which any person who could show a certificate that he belonged to a religious society, either incorporated or unincorporated, other than the regularly established society of the town or parish, was exempt from paying taxes for the support of the Establishment.[81] This law was supported by the Massachusetts Supreme Court in 1817 in an opinion delivered by Chief Justice Parker, who did not like it, but thought it Constitutional.[82] It led ultimately to the overthrow of the Congregational Establishment in 1833.[83]

But although Jefferson was a thoroughgoing liberal in his political and religious outlook, it became increasingly evident to open-minded people that he was not an iconoclast either in his statesmanship or his religion. In particular, as his years in the presidency went on, the Churches, which had been much offended and frightened by his unorthodox views, came to realize, as we have shown in dealing with his career and his religious opinions,[84] that he was not an atheist—indeed, that he emphasized the importance to the nation of faith in God.

Section 4. THE LOUISIANA PURCHASE (1803) AND THE RESULTS

The Louisiana Purchase brought for the first time a considerable Roman Catholic population, with the Church of Rome as an Established Church, into the boundaries of the United States. It also went far toward assuring the ultimate major influence of the Anglo-Saxon Protestant tradition as contrasted with the Latin Roman Catholic tradition in the Mississippi Valley. This was of great significance; for, since the defeat of the French at Quebec in 1759 and the resulting Treaty of Paris of 1763, which brought the French and Indian War (part of the European Seven Years' War) to an end, this region had been the last remainder of the extensive French Catholic empire in North America.

It must be remembered that the purchase carried with it not only what we think of as Louisiana, but in general the whole western watershed of the Mississippi River and of the Missouri, including territory from Canada to the Gulf, and extending as far west as the Rocky Mountains, thus nearly doubling the area of the United States. Louisiana, owing to its Spanish and French background, was Roman Catholic in tradition. French and Spanish missionaries had done much to open it to settlement and trade.

Father Thomas Hasset, placed in charge when the Spanish authorities left, was not enthusiastic about what would happen under the Americans. Under date of December 23, 1803, referring to the number of priests who would remain, he wrote, "God only knows!"[85] They understood that there was separation of Church and State under the American flag, but they had not been impressed with the religious interests of Americans in New Orleans, and they were worried about their salary allowance of thirty dollars a month which the King of Spain had been accustomed to pay. As a matter of fact, some sixteen priests remained, French, Spanish, and Irish. For about three weeks, from November 30 to December 20, 1803, they were technically under the jurisdiction of France, as Spain had ceded the territory to France, and France in turn was to cede it to the United States. They were placed by Catholic authority under the jurisdiction of Bishop Carroll in Baltimore.

The treaty ceding Louisiana, signed April 30, 1803, was in the name of "The President of the United States of America, and the First Consul of the French Republic, in the name of the French people," and was duly laid before Congress by President Jefferson on October 17, 1803. Article III read as follows:

> The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages, and immunities,

of citizens of the United States; and in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.[86]

The following year Congress divided Louisiana into two territories, and provided for their government. The Act contains the following clause (Section 12) regarding religious liberty:

That no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint or disability on account of his religious opinions, profession, or worship; in all of which he shall be free to maintain his own, and not burdened for those of another. . . .[87]

The difficulties of administering the new territory were many, but the relations with the Roman Catholics were soon straightened out, at least in principle, thanks largely to the tactful words and actions of the American president and representatives in Louisiana.

Under date of March 21, 1804, the Ursuline nuns of New Orleans wrote President Jefferson soliciting the passage by Congress of an act guaranteeing their property and rights. He wrote in reply an admirable letter which did much to get matters started right.

The principles of the constitution of the United States [he said] are a sure guaranty to you that it will be preserved to you sacred and inviolate, and that your Institution will be permitted to govern itself according to its own voluntary rules without interference from the civil authority. Whatever diversity of shades may appear in the religious opinions of our fellow citizens, the charitable objects of your Institution cannot be of indifference to any; and its furtherance of the wholesome purpose by training up its young members in the way they should go, cannot fail to insure the patronage of the government it is under. Be assured that it will meet with all the protection my office can give it.[88]

In May, 1804, William C. C. Claiborne (1775–1817), who had served as one of the commissioners to take over Louisiana, and was later appointed Governor of Orleans Territory, wrote the following letter from New Orleans to Lieutenant Henry Hopkins, the civil commandant of the district:

Sir: Your letter of the 20th instant has been duly received. Every Citizen of Louisiana will be protected in the Religion of his choice, and is at liberty to worship Almighty God, in such manner as his conscience shall dictate; but when it unfortunately happens that the house of God is converted into a temple of discord, and the professors of Christianity, so far deviate from the mild precepts of their Heavenly Master, as to become the Sons of Riot, the civil authority must so far interfere as to take measures to preserve the public peace; but in such interference the greatest moderation should

be observed, and every thing done to conciliate the public mind and restore harmony to the Society.

Your late conduct in shutting the Church of your District seems to have been directed by a sound discretion, and was certainly a prudent measure; you have therefore my entire approbation.

The whole affair is now before the Revd Mr. Welsh, the head of the Catholic Church in Louisiana, and from his good intentions and timely mediation, I persuade myself the dispute will be promptly and amicably settled. In the mean time, and until you hear further from me on the Subject, you will retain in your possession the keys of the Church.

I am, Sir, very respectfully, your Obdt Servt

(Signed) WM. C. C. CLAIBORNE.[89]

In the same spirit he wrote the Secretary of State, Mr. Madison, under date of March 24, 1805:

. . . I have taken occasion to mention to the Mayor of the City, and to several influential Men, that in any religious contest which might arise, the Government could not, and would not interfere, unless the public peace was disturbed. That the rights of conscience were sacred, and the people were at liberty to worship almighty God, in what manner they pleased. But that the Law which proclaimed good order, would operate, and the Civil Magistrate must Act whenever the public peace was disturbed.[90]

This was in keeping with the ideal presented by President Jefferson in his second inaugural address three weeks earlier (March 4, 1805), but it is doubtful whether it had reached Governor Claiborne when he wrote this important letter in the same spirit. Jefferson said:

In matters of religion I have considered that its free exercise is placed by the Constitution independent of the powers of the General Government. I have therefore undertaken on no occasion to prescribe the religious exercises suited to it, but have left them, as the Constitution found them, under the direction and discipline of the church or state authorities acknowledged by the several religious societies.[91]

It will be seen then that in the treaty ceding Louisiana to the United States, in the actions of Congress organizing new territories in the new possessions, and in the words and acts of the president and of the first governors representing this country, the essential American ideals of religious liberty as outlined earlier in the Constitution were observed.

These were to be encouraged by the nature of the new territory. Not only were settlements small and scattered, making authoritative religious supervision difficult, but the vast plains, the great rivers, and the high mountains of the new region were destined to encourage a sense of closeness to nature and to nature's God, together with a feeling of liberty, individualism, and independ-

ence—perhaps also encouraged by contact with the tribal Indians of the West. These were factors that were to make it easier to carry out in the Louisiana and new Northwest territories the ideal of religious freedom first incorporated for the West in the Ordinance of 1787.

Section 5. THE RISE OF HUMANITARIANISM AND THE FOUNDING OF PHILANTHROPIC AGENCIES

Another influence in this period which was ultimately to affect greatly the relations between Church and State was the rise of humanitarianism. We have already dealt with this as it related itself to the Christianizing and educating of the West, including Indian missions.[92] Some evidences of this new movement in other fields of activity will here be stated chronologically. If there were sufficient space it could be shown that the Churches were actively behind most of these movements and that their leaders were, to a very large extent, earnest church members, ministers of religion being well represented. It should also be noted that the fields covered were fields which later in the century were to be entered largely by the State, with conflicts of interest often resulting.

In the eighteenth century "charity," outside of orphanages and hospitals, had been mainly, and "education" had been largely, a personal or a church affair. Many schools and colleges had been established, for the most part under church auspices, but it was not until nearly its close that organizations of any importance to meet broad social needs were established in this country.

The new movement had many causes. The major European influences were the development on the one hand, by Condorcet and other French philosophers of the Enlightenment, of the theories of the natural rights of man and of human progress, and on the other the Methodist movement—both equally interested in very different ways in the improvement of the common man's lot.[93]

In this country the leading influences were the Great Awakening and its successor, the Great Revival of 1797–1805, and the establishment of the new nation with its manifold needs.

Here are some of the most representative Americans "firsts" that came into existence after the close of the Revolutionary War.

1784—The Dutch Reformed Church establishes the first Protestant theological seminary in the United States, finding its supply of ministers from abroad drying up.

1787—The Philadelphia Society for Alleviating the Miseries of Public Prisoners, a revival of the Philadelphia Society for Assisting Distressed Prisoners established a few years earlier. Bishop William White was president of this society for forty years, beginning a tradition in the new republic of the clergy's

active interest in philanthropic movements and frequent leadership of them. This has lasted to our day. The preamble of the constitution refers to the obligations of benevolence being founded on the "precepts and example of the Author of Christianity."

1790—A First Day or Sunday School Society organized in Philadelphia with directors from such different groups as Episcopalians, Quakers, and Roman Catholics.

1791—The First Roman Catholic seminary for the training of Catholic priests in the United States established by the Sulpicians in Baltimore.

1791—The New York Dispensary.

1792—The Female Academy at Philadelphia—first to receive official sanction in the United States.

1794—The Massachusetts Charitable Fire Society.

1797—The Moral Society of Yale College—versus vice.

1798—The Society for the Relief of Poor Widows with small children.

1800—The Society for the Free Instruction of Indigent Boys started in Philadelphia.

1803—The Massachusetts Society for Promoting Christian Knowledge—first tract society in the United States.

1808—The Andover Theological Seminary opened—partly to oppose the ultraliberal tendencies shown at Harvard by the election of a Unitarian to the Hollis Professorship of Divinity, and partly to provide more effective training for home and foreign missionary work. This most important early Protestant seminary in the United States was followed by sixteen others in twenty years.

1811—The Massachusetts General Hospital (Boston).

1812—Presbyterians establish at Princeton their first theological seminary in the United States.

1812—Girard College for Orphans established and endowed in Philadelphia by Stephen Girard to make his riches "do his generous will forever."

1813—The Connecticut Society for the Promotion of Good Morals founded under the influence of the Reverend Lyman Beecher, and dedicated to the suppression of drunkenness, gambling, and lawlessness. This society was important as representing an early reform effort in which ministers and laymen co-operated.[94]

1814—The Humane Society of New York.

1814—St. John's Church (Episcopal), Northern Liberties, Philadelphia, opens —"the first school officially incorporated in any religious organization in America."[95]

1815—The New York Peace Society—probably the first of its kind in the world.

1816—The Savings Funds Society, Philadelphia.

1816—The American Colonization Society, established by Christian philanthropists to help solve the problem of free Negroes by their emigration to Africa.

1817—The Connecticut Asylum for the Deaf and Dumb (later the American Asylum, and now the American School for the Deaf) opened in Hartford with the Reverend Thomas Hopkins Gallaudet, one of its leading promoters, as its first principal. Gallaudet College in Washington, for the higher education of deaf mutes, was named after him. It is supported by Congress, and grew out of an institution for the deaf and dumb started by his son in 1857 and known for many years as the Columbia Institution for the Deaf and Dumb.

1818—The New York Society for the Prevention of Pauperism.

1819—General Theological Seminary established by Episcopalians.

1821—The Troy Female Seminary founded by Emma Willard and destined to render pioneer service to the cause of higher education of women.

1822-23—The American Society for Meliorating the Condition of the Jews founded. This organization under Christian auspices had two hundred branches in 1825. It was actuated, however, mainly by missionary motives rather than civic and philanthropic ones.

1824—The Prison Discipline Society (Boston).

1824—The American Sunday School Union.

1824—The Reformed Society of Israelites established in South Carolina, with the purpose of altering synagogue customs and ceremonies to fit American conditions. Among its purposes were to have the major part of the services in English; to discontinue ceremonies which partake of bigotry; and to include an English sermon. The society continued for nearly a decade, and paved the way for a more liberal outlook on the part of American Jewry.

1824—The Baptists establish their first theological seminary in the United States.

1825—The House of Refuge founded by the New York Society for the Prevention of Pauperism. A European visitor described it as a place where youth were taught "the habits of industry and the principles of religion." Later it was given public support.

1826—American Seamen's Friends Society. As this was the era of American shipping, there was deep interest in the cause of improving the conditions of the sailor's life both in port and on shipboard.

1826—The American Society for the Promotion of Temperance, whose work

was specially needed in the large cities of the East and on the Western frontier.

1826—Coeducational high schools established by Horace Mann in Massachusetts.

1828—The American Peace Society, a union of various societies which had existed since 1815, whose purpose was to "diffuse light respecting the evils of war and the best means of effecting its abolition."

1828—The General Union for Promoting the Observance of the Christian Sabbath. From the time of the founding of the Connecticut Society for the Promotion of Morals in 1812 temperance and Sabbath observance became two of the fields of Christian citizenship in which the Church was most concerned, and both, through legislation, were destined to bring the Church and State into some conflict.

1830—The Union Benevolent Association of Philadelphia.

1832—The Perkins Institution and Massachusetts School for the Blind.

1832—The American Anti-Slavery Society. This movement was to have a profound influence.[96]

1833—The New York Protestant Episcopal City Missions Society.

1833—The first American Anti-Lottery Society.

1834—The New York Moral Reform Society.

1834—The Association of Delegates from the Benevolent Societies of Boston.

1842—The Association for Improving the Condition of the Poor of New York. This was the earliest of many similar societies in different parts of the country. It was "inaugurated by Protestants, controlled by Protestants, and supported by Protestant money."[97]

1846—The Methodists, overcoming earlier opposition to special education for the ministry, establish their first theological seminary in the United States.

1856—St. Vincent's Infant Asylum of Boston—the first foundling hospital in the United States.

These and similar philanthropic and educational organizations and institutions were almost equally divided among New York, Boston, and Philadelphia, the last taking the lead in the early period. This was due mainly to the benevolent activity of the Quakers. David Ramsay (1749–1815), the contemporary historian, clearly saw Pennsylvania's leadership in many humanitarian fields. He said:

> From the latter periods of the revolution till the present time, schools, colleges, societies and institutions for promoting literature, arts, manufactures, agriculture, and for extending human happiness, have been increased far beyond anything that ever took place before the declaration of independence. Every state in the union has done more or less in this way, but Pennsylvania has done the most. The following institutions have been very lately founded in that state, and most of them in the time of the

war or since the peace. An university in the city of Philadelphia; a college of physicians in the same place; Dickinson college at Carlisle; Franklin college at Lancaster; the Protestant Episcopal academy in Philadelphia; academies at Yorktown, at Germantown, at Pittsburgh and Washington; and an academy in Philadelphia for young ladies; societies for promoting political enquiries; for the medical relief of the poor, under the title of the Philadelphia dispensary; for promoting the abolition of slavery, and the relief of free negroes unlawfully held in bondage; for propagating the gospel among the Indians, under the direction of the United Brethren; for the encouragement of manufactures and the useful arts; for alleviating the miseries of prisons. Such have been some of the beneficial effects which have resulted from that expansion of the human mind, which has been produced by the revolution. . . .[98]

Edward Livingston (1764–1836), writing in 1822, also said:

Happily for Pennsylvania, and perhaps for the world, she had enlightened men to frame her penal laws; and happier still, she had a class of citizens admirably calculated to execute them with the zeal of enthusiasm.

The founder of that State, and his first associates, belonged to a sect which fitted them, by its principles, and by the habits and pursuits which it created and prescribed, to be the agents of a reform in jurisprudence similar to that which they adopted, and perhaps carried to excess, in religion. Their descendents, with less of that enthusiasm which in their ancestors was exalted by persecution, had all the active benevolence and Christian charity necessary to prompt, and the perseverance and unwearied industry to support, their exertions.

Abstracted by their tenets from the pleasures which occupy so large a portion of life among other sects; equally excluded from other pursuits in which so many find occupation; freed from the vexations of mutual litigation by submitting every difference to the umpirage of the elders, and from the tyranny of fashion by an independent contempt for its rules, the modern Quakers devote all the time which others waste in dissipation, or employ in intriguing for public employment, to the direction of charitable institutions, and that surplus wealth which others dissipate in frivolous pursuits, to the cause of humanity.

In every society for promoting education, for instructing or supporting the poor, for relieving the distresses of prisoners, for suppressing vice and immorality, they are active and zealous members; and they indemnify themselves for the loss of the honors and the pleasures of the world by the highest of all honors, the purest of all pleasures, that of doing good.[99]

Perhaps the most significant from the standpoint of constructive social-welfare work of the early American philanthropic organizations was the Association of Delegates from the Benevolent Society of Boston (1834), which was due to the efforts of the Reverend Joseph Tuckerman (1778–1840), a Unitarian city missionary, or, as he was generally called, minister-at-large. He brought together similar ministers-at-large of four different Protestant religious bodies

and one Roman Catholic priest, and they carried through effective plans for alleviating social conditions. Professor Francis Peabody is probably within reason when he states that the work of Mr. Tuckerman provides "the starting point for any history of scientific charity in this country."[100]

Along with the founding of philanthropic institutions in the various states went a humanizing of the laws, especially in such matters as the care of the handicapped, the abolition of imprisonment for debt, and the limitations of the death penalty. Whereas in the time of Blackstone one hundred and sixty crimes were punishable by death, Pennsylvania prior to the Revolution required a jury trial before anyone could be deprived of life, liberty, or estate, and in 1794 death was restricted to deliberate homicide.[101] This is characteristic of the more humane laws that were being adopted almost everywhere.

This humanitarian influence, as we have seen, lasted for several decades, and reached its climax in the antislavery movement. It developed a sense of brotherhood among the citizens of the new nation, and was an important factor in making the period after the War of 1812, and especially the years from 1817 to 1824, "the Era of Good Feeling," covering the two terms of Monroe's presidency. The leaders of the Churches took a large part in all phases of this movement, except perhaps in the early effort to secure industrial rights for workers, which McMaster in his study of social movements considers "the great feature"[102] of the first decade of the century—a field which the Church was not to enter actively until the last quarter of the century, when the situation was to become much more acute. Many important benevolent movements and institutions were "cradled" in the Church.

Section 6. THE WAR OF 1812 AND THE RISE OF THE PEACE MOVEMENT

On July 9, 1812, only three weeks after the declaration of war against Great Britain, President Madison (1751–1836) issued this proclamation:

> Whereas the Congress of the United States, by a joint resolution of the two Houses, have signified a request that a day may be recommended to be observed by the people of the United States with religious solemnity as a day of public humiliation and prayer; and
>
> Whereas such a recommendation will enable the several religious denominations and societies so disposed to offer at one and the same time their common vows and adorations to Almighty God on the solemn occasion produced by the war in which He has been pleased to permit the injustice of a foreign power to involve these United States:
>
> I do therefore recommend the third Thursday in August next as a convenient day

to be set apart for the devout purposes of rendering the Sovereign of the Universe and the Benefactor of Mankind the public homage due to His holy attributes; of acknowledging the transgressions which might justly provoke the manifestations of His divine displeasure; of seeking His merciful forgiveness and His assistance in the great duties of repentance and amendment, and especially of offering fervent supplications that in the present season of calamity and war He would take the American people under His peculiar care and protection; that He would guide their public councils, animate their patriotism, and bestow His blessing on their arms; that He would inspire all nations with a love of justice and of concord and with a reverence for the unerring precept of our holy religion to do to others as they would require that others should do to them; and, finally, that turning the hearts of our enemies from the violence and injustice which sway their councils against us, He would hasten a restoration of the blessings of peace.[104]

The War of 1812 which ensued was not popular among most of the religious leaders of New England. But in many ways the section prospered as a result of it, and much diversification of its industrial life resulted. Enlistments were discouraged by many religious leaders, especially Connecticut Congregationalists, and the president's requisitions for militia were declined by some states. A proposed vote of thanks to a naval hero failed to pass in the Massachusetts legislature, being rejected on the ground that it was "not becoming a moral and religious people."[105] Victories of England and her allies in the European war against the France of Napoleon were celebrated. The more thoughtful clergymen of the time were not sympathetic with the "War Hawks," chiefly the younger members of Congress from the West and South who wished through a military victory to prevent the Indians friendly to Great Britain from an aggressive policy on the Northwest frontier, and to secure the Floridas from Spain and Canada from Great Britain. They encouraged President Madison in his warlike plans. They had a good talking point in Great Britain's policy of "impressing" from American ships on the high seas deserters from the Royal Navy and other British subjects, especially as some Americans were victims of this policy.

The Roman Catholic Church was in a difficult position, owing to the fact that the papacy was in captivity, and ecclesiastical business with foreign countries was virtually at a standstill, but the Catholics in the United States were entirely loyal to the government, and certain groups, such as the Irish element, gave it strong support, partly from patriotic reasons, partly from inherited antagonism to England, and partly from love of a good fight.

Shortly after President Madison had appointed a day for prayer in the crisis, Archbishop Carroll[106] issued this charge to his clergy:

Rev. Sir:—

The President of the United States has recommended to the people thereof to set apart Thursday, the 20th of August, for the purpose of rendering public homage to the Supreme Ruler of the universe, humble adoration of His infinite perfections, and supplications to him for the protecting of peace and prosperity to our common Country. In compliance with this recommendation and considering that we, the members of the Catholic Church, are at least, equally indebted as our fellow-citizens to the Bestower of every good gift, for past and present blessings, stand in the same need of His protection, and ought to feel an equal interest in the welfare of these United States during the awful crisis now hanging over them: I cannot hesitate to require the respective clergymen employed in the care of souls throughout this Diocese to invite and encourage the faithful under their pastoral charge to unite on Thursday August 20, for divine worship, and most particularly in offering through the minister of the church the august and salutary sacrifice of Grace, the Body and Blood of the Lamb of God Which takes away the sins of the world, to implore through it divine protection in all our lawful pursuits public and private, to shield us in danger, and to restore and secure to us the return of the days of peace, a happy peace in this life and above all that peace which the world cannot give.

JOHN, *Archbp. of Baltimore.*[107]

At the close of the war a solemn *Te Deum* was sung in the churches of Baltimore on the archbishop's orders. Another interesting feature was the welcome by the Bishop of Louisiana and the Floridas of General Andrew Jackson, then in command in Louisiana, at the cathedral in New Orleans. The letter leading up to this event is characteristic of the crude but direct mode of expression of the future president. On January 19, 1815, Jackson wrote to Abbé Guillaume Dubourg, apostolic administrator of the diocese, suggesting a service of thanksgiving in the cathedral.

The signal interposition of heaven; in giving success to our arms against the Enemy, who: so lately landed on our Shores, an enemy as powerfull, as Inveterate in his hatred, Wile it must excite in every bosome attached to the happy Government under which we live, emotions of the liveliest gratitude, requires at the same time some manifestation of those feelings

Permit me therefore to entreat that you will cause the service of public thanksgiving to be performed in the Cathedral in token at once of the great assistance we have recd. from the *ruler of all Events* and of our humble sense of it.[108]

The service was held, and General Jackson attended.[109]

The Presbyterian Church was not a unit regarding the war. Dr. Alexander MacLeod (1774–1833), pastor of the First Reformed Presbyterian Church of New York, was the foremost among American preachers earnestly supporting

the policy of the government. His sympathetic attitude was reflected by the Synod of 1812, which proposed that its members should take what was virtually an oath of allegiance to the United States, but with no mention of the Constitution, which some of them felt they could not conscientiously support because it contained no specific reference to God. The suggested oath read:

I, A.B., do solemnly declare, in the name of the Most High God, the searcher of hearts, that I abjure all foreign allegiance whatsoever, and hold that these States and the United States are, and ought to be, sovereign and independent of all other nations and government; and that I will promote the best interests of this empire, maintain its independence, preserve its peace, and support the integrity of the Union to the best of my power.[110]

The Friends' religious scruples were generally respected during the war, but the Virginia Yearly Meeting thought it necessary or advisable to send a memorial to the legislature of the state concerning the militia law then in existence. The memorial stated:

In this enlightened age and country, and before this Legislature, your Memorialists conceive it unnecessary to urge the unalienable rights of conscience, or to adduce any arguments to shew that the relations between man and his Creator, neither can, nor ought to be prescribed or controuled by any human authority. It is unnecessary, because the proposition is self evident, and especially because it is one of the fundamental principles, upon which the civil and political institutions of this country are established. . . . the *state itself,* by its convention which ratified the federal constitution, expressly declared, that "the liberty of conscience cannot be cancelled, abridged, restrained, or modified by any authority of the United States." . . . They therefore respectfully petition that the laws imposing military requisitions and penalties for non-compliance, may be considered as they respect your petitioners, and such relief afforded as to the wisdom of the legislature shall seem just and necessary.[111]

In an accompanying letter, the clerk explains the attitude of Quakers against war. He says:

This society *maintain,* with the *framers* of our constitution, and in conformity *with the repeatedly declared sense* of the American people, that government has no right to bring the *laws of God* and man into *competition*. . . .[112]

Near the close of the war the executive committee (sometimes known among Friends as the "Meeting for Sufferings") of the Baltimore Yearly Meeting adopted this message to its members:

Friends are united in a renewed sense of the preciousness of our religious Testimony against War. . . . Whatever may be our share of sufferings, our sincerity cannot be better manifested than by a conduct upon our part correspondent with the meekness

and gentleness of Christ. We feel an earnest desire that Friends, when called upon for military requisitions, may carefully guard against any conduct either at variance with our peaceful profession, or tending to lessen their sufferings by any indirect payment of fines or other military demands.[113]

These quotations regarding the Friends would probably also represent the general point of view of other pacifist denominations, such as Mennonites and Brethren (Dunkers). An annual conference of the Brethren, meeting at the time of great excitement caused by the recent British invasion of Maryland, passd in 1815 the following resolution:

2nd, It has been discussed by us concerning the war matter, and it is agreed by all the brethren that if a brother or brother's sons who consider themselves according to the teaching of the brethren "defenseless" and prove themselves to be such and wish to obey the teachings of the Brethren—when these shall be hard oppressed with the payment of fines they shall be assisted by the brethren according to the teaching of the apostle—let one bear the burden of another, thus you will fulfill the law of Jesus Christ.[114]

The war produced one book of some significance on the Church-State problem. It was by the well-known pastor of the Reformed Presbyterian Church of New York City and was called *A Scriptural View of the Character, Causes and Ends of the Present War*. It was twice published in 1815, once before and once after news reached America of the peace treaty signed at Ghent on December 24, 1814. It was a reply to two groups which were just beginning to be heard in this country—those who would today be called pacifists (a word first used nearly a century later, 1905) and those who felt that the pulpit should confine itself to what were considered purely "spiritual" issues. The book is closely reasoned from the basis of Bible teaching, and argues effectively that defensive war is justified under certain conditions, and less effectively that the War of 1812 was justified. The author speaks with regret of the indifference and opposition of the pulpit to the war.

. . . It was becoming a general opinion, that the clergy and the church were, on the great question between the United States and England, upon the side of the enemy. Many pious people were discouraged; their personal exertions, and their prayers, were affected by this fact: and even, when our own city was under the apprehension of immediate invasion, so great was the force of prejudice, that many men of intelligent piety doubted, whether they could join together in prayer, *for courage to our warriors, and success to our armaments, in order to procure a speedy, an honourable, and a permanent peace*. I beheld with alarm, the extent of the evil of party spirit. . . .[115]

Evidently his own preaching was of a definitely "patriotic" character. "Minis-

ters," he says, "have the right of discussing from the pulpit" political issues "which affect Christian morals."[116]

> The judicious minister will weigh, in the balance of the sanctuary, every subject, for the purpose of determining its importance. He will rarely enter upon political topics. He will never descend to questions of mere party: but there are times in which he ought not to be silent, respecting the conduct of nations, or of christians in their civil capacity.[117]

This has a very modern sound. It might well have been a pronouncement of the Federal Council of the Churches of Christ.

After considering in logical order the arguments against war in general, he charges the British government of the time with being "a despotic usurpation," "a branch of the general antichristian apostacy."[118]

> I affirm the *justice of the war from its commencement.* Our neutral trade was violently opposed, and almost totally destroyed; our property was captured; our fellow-citizens were enslaved, while peaceably pursuing their proper employment; and negotiation failed, after the exertion of years, to procure redress for the past, or immunity for the future. To recover and preserve property—To redeem and to defend men, these are lawful causes of war. These are the causes of the present war. . . .[119]

The author was a devoted friend of the American Constitution, though referring to two limitations which were to be mentioned so frequently a generation later—its recognition of slavery and its failure specifically to recognize God. But in spite of these alleged defects, "the church of God, is, in this country, upon a better footing, as it respects the national power, than in any other country upon earth."[120] So, he reasoned, since the Bible clearly authorizes defensive war, and since Britain's oppressive acts were so serious, the Church was fully justified in supporting the State in this conflict.

Two extracts from this early American work justifying war in general, and the War of 1812 in particular, seem worth quoting:

> If negotiation should fail to secure a speedy peace, the dangers of the country call for unanimity in the strife of blood and battle. In that case, supporting the war will be the means of preserving *the union of the states:* and this is unquestionably desirable. . . .[121]

> I have spoken upon this subject, as a WHIG- as the friend of religion and liberty—as a consistent Presbyterian, averse from arbitrary power. Our fathers, my dear hearers, were of that stamp. Our brethren in the Reformed Church, (for I have spoken their sentiments concerning all the great moral principles which I have discussed), are now, and have been from the dawn of the reformation, Whigs from conscience. . . .[122]

That the book seemed called for is clear evidence that many ministers were lukewarm or antagonistic toward this second contest with England, and the

fact that this serious and dignified treatise on the subject, with its conservative type of argument, went through two editions shows that its author had many supporters.

As to the general effect of the war on the American Churches, the Reverend Lyman Beecher, always an interesting commentator on church matters, especially in New England, is emphatic.

> The war [he said] threatened to prostrate our civil and religious institutions by increasing taxation and loss of income. . . . This, with loss of public credit, became an intolerable burden, and all institutions, civil, literary, and ecclesiastical, felt the pressure and seemed as if they must be crushed.[123]

A highly important result of the War of 1812 was that it gave birth to the first peace societies. These were founded in 1815; one in New York as a result of the activities of an earnest Christian layman, David Low Dodge (1774–1852), who had published in 1812 *War Inconsistent with the Religion of Christ;* the other by two Unitarian ministers in Boston, Noah Worcester (1758–1837) and William Ellery Channing (1780–1842). Several additional societies were formed in the years immediately following, and united in 1828 in the American Peace Society, an organization with a most honorable history. William Ladd (1778–1841) became the active leader of this movement, which was partly a reaction against the War of 1812 and the Napoleonic wars, and partly an expression of the determination of a high-minded group of Christian humanitarians to influence public opinion in government against war as contrary to the ideas of Christian ethics and human brotherhood. It is interesting to note that in 1833 the American Peace Society, which was largely supported by church leaders, petitioned the Massachusetts legislature in favor of the idea of a congress of nations, and that the New York Peace Society similarly petitioned the Federal government in 1837.[124]

After these societies had been in existence for about twenty years, there rose a division of opinion to which we have become accustomed in recent years between those who believed "that all war was contrary to the spirit of the Gospel and inconsistent with Christianity," and those who believed in a less radical policy. This question of the so-called Gospel decision divided the society.[125]

Section 7. THE EFFECTS OF IMMIGRATION, URBANIZATION, AND INDUSTRIALIZATION

The three social developments mentioned in this section title were closely related. The first was the main cause of the second and greatly aided the last, and all three were to give the Church difficult new tasks.

Few new factors that entered American life in the decades after the formation of the government were to have a greater effect on Church-State problems than the increased immigration from Europe, and especially from Roman Catholic Europe. This began in earnest after 1815, the year which saw the close of the Napoleonic wars with the Battle of Waterloo, and also the close of the War of 1812, following the treaty of peace signed by Great Britain and the United States in December, 1814. From 1783 up to 1820 it has been generally accepted that there were about 250,000 immigrants, of whom perhaps one-fifth were Irish Catholics. In 1820 the regular immigration statistics of our government began to be published. In that year some 8,385 aliens gained entrance. By 1840 the number for the year had increased to 84,066, and in 1850 the figure was 369,980, a record not to be surpassed for twenty years.[126]

When we come to consider the specifically Irish immigration[127]—and it was the one that was to create the most serious Church-State problem—we find that we are in a difficult position, as it is hard to tell what percentage of the Irish immigrants were of the Celtic population of the southern or dominantly Catholic portion of the island. A name survey of the census of 1790 indicates that under 4 per cent (3.7) of the population of the United States was of Celtic Irish stock.[128] This was at a time when the number of Roman Catholic adherents in the country was about 35,000. In the early decades of the republic the majority of Irish continued to be Protestant Scotch-Irish, but about 1825 the tide turned. In all, some 54,338 Irish were officially counted in the decade preceding 1830, and in the following decade, 207,381. We merely call attention to these striking facts here because they appropriately appear in the chapter on "The New Influences Affecting Churches and Church-State Relations in the Early Decades of the Nineteenth Century," as they deeply influenced such relations in this country. This was partly because they added largely to the Catholic population, and partly because they added a group with strong opinions and a flair for politics. In a word, the Irish immigration created many difficult adjustments, but was to add greatly to the richness of American life.

The importance of meeting the needs of the recently arrived Irish Catholics, mostly drawn from the little-educated rural laboring population made desperately poor by the potato blight, was more responsible than any other factor for the development of parochial schools[129] and for the controversy over the Bible in public schools.[130] The acute urban problems connected with the new immigration will be dealt with below.

Perhaps the most marked influence of Irish immigration on Church-State relations was the fact that it caused the rise of the Nativistic movement in America, which, as we shall see, had many serious repercussions.[131] Besides, the large new supply of cheap labor from Europe, which was overwhelmingly

Roman Catholic, was directly and indirectly an economic and social factor of importance, for it not only made possible the development of transportation in the West, but also created many of the problems connected with labor and industry.[132]

The arrival of a considerable number of Jews in this country also raised certain problems of Church-State relations, but the large-scale Jewish immigration did not take place until the closing decades of the nineteenth century, there being only about 200,000 Jews in the United States at the close of the Civil War.[133]

Closely related to the increase of immigration was the urban drift. When the republic was founded more than 95 per cent of the population was agrarian. By 1830 the urban population, that is, in towns over 8,000, had gone up to 6.7 per cent and by 1850 to 12.5 per cent.[134] Later it advanced until by 1940 it was just over half.

This urban development had certain interesting Church-State bearings. As Bishop John Hughes (1797–1864)—later archbishop—was determined to have the Church keep in close touch with the newly arrived immigrants from Europe, especially from Ireland, he strongly opposed their going West to take up an agricultural life. The result, aided by the natural gregariousness of the Irish, was their concentration in the large cities of the East, where they identified themselves with the party of the Jefferson-Jackson tradition, which had been opposed to the Alien and Sedition Acts and was otherwise more favorable to liberal ideas than its opponents. A resulting development was the problem of the Irish boss, whose political organization came to be a demoralizing factor in most large cities. The new immigrants were not responsible for the founding of Tammany Hall and similar "machines," but they soon made a large contribution to their development. The rural West became increasingly antagonistic to the great cities of the East, and many splits along Protestant-Catholic, urban-rural, and what came to be Republican and Democratic groups resulted.

There were many other developments where urbanization affected Church-State relations. It strengthened enormously interest in what has come to be known as the social gospel, which became concerned with such matters as the problems of labor conditions, ethics of trade, the Americanization of the immigrant, the prevention of "pauperism," the problem of temperance, the improvement of city hospitals and prisons, and social-welfare institutions.[135] The Churches, as we shall see later,[136] came to realize that urbanization carried with it evils and difficulties which personal evangelization alone could not meet; there must be a brave attempt to influence public opinion and legislation. These issues, as well as the problem of the immigration of large numbers of Jews from Europe, became much more acute after the Civil War; but they first came to

the surface as matters in which Church and State were mutually interested in the second quarter of the nineteenth century.

A factor in the early decades of the nineteenth century closely related to immigration and urbanization was industrialization. This was largely due to the new labor-saving machinery and to the development of various types of power which aided both manufacture and transportation. A few dates tell the story.

1787—John Fitch demonstrates steamboat on Delaware.
1792—Shoemakers of Philadelphia form a union, and four years later begin a series of strikes.
1793—Eli Whitney patents the cotton gin.
1794—A steam engine in use in Pittsburgh.
1798—Eli Whitney introduces the "American System" of interlocking parts in manufacture.
1802—Oliver Evans completes an effective high pressure steam engine.
1807—Robert Fulton's steamboat, the *Clermont,* makes the trip from New York to Albany and return.
1813—Factory built by New England merchants in Waltham, Massachusetts, for complete manufacture of cotton goods.
1816—Tariff act lays foundation for policy of "protection" of American industries.
1817—First effective iron mill put into operation in Pennsylvania.
1819—First important industrial smash and financial panic of the "machine age" in this country.
1822—Troy Polytechnic Institute founded—the first American scientific and technological school.
1822—Merrimack Manufacturing Company, chartered to make use of great river water power, is influential in developing Lowell, Massachusetts, into the first highly organized industrial community in the United States. Here for the first time women were employed in large numbers in factory work.
1824—U.S. Supreme Court in case of *Gibbons* v. *Ogden* broadly interprets the "commerce clause" of the Constitution, thereby laying foundations for national development of industry.
1825—Erie Canal connects New York with Great Lakes.
1827—Mechanics Union of Trade Associations established in Philadelphia.
1828—Railroad building starts with construction of the Baltimore & Ohio.
1831—Joseph Henry invents the electromagnetic telegraph, and Samuel F. B. Morse patents the electric telegraph nine years later.
1831—New England Association of Farmers, Mechanics and Other Working Men established.
1833—New York establishes first effective city-wide union of trades.
1834—Cyrus McCormick patents the automatic reaper or harvester.
1834—National Trades Union formed.
1836—Convention held in New York with delegates from several states establishes

National Cooperative Association of Journeymen Cordwainers, and in the same year union printers entered into a loose federation.

1836—Separate U.S. Patent Office established, taking over patent registration files of State Department.

1839—*Great Western,* first important trans-Atlantic passenger ship, constructed.

1841—Goodyear rubber patents granted.[137]

The mere listing of these events in the first fifty years of the government, reaching their climax under Jackson, will show that the Industrial Revolution got well under way in the United States in the first third of the nineteenth century. Here we find factories, trade unions, strikes, labor-saving machinery, steam power, protective tariffs, industrial centralization in towns, and other factors that were to cause many readjustment difficulties. They must at least be mentioned here, because the American history of the time and later cannot be understood without some knowledge of them, and because they were to affect profoundly the Churches and ultimately to have their bearing on Church–State relations.

They were to influence the Churches and church membership by taking hundreds of thousands of people away from their old rural homes with their associations and traditions, and placing them in new surroundings where conditions of urban life were strange and full both of moral pitfalls and of opportunities for improvement; by limiting their close contacts mainly to other industrial workers in place of the broader community life; by tending to throw them into unions and other associations of workers representing a different loyalty from that of the village and its life; by increasing the relative significance of the school and the lyceum, and decreasing that of the well-established home and the church; by enlarging the gap between employer and employee and tending to make it a matter of inheritance; by taking women out of their restricted home and church absorption; by substituting mechanics' libraries for church libraries; by making the politicians and the newspaper editor, rather than the local minister, the chief molders of public opinion; by substituting impersonal factory economy for home economy and unity; by opening the minds of men to all sorts of new economic and social theories that would disturb inherited traditions before people became adjusted to them; by the great increase of workers dependent upon wages rather than on a self-sufficient family economy; and so on almost ad infinitum.

These and similar results had possibilities for both good and ill, with probably the ill predominating in the early years in most large industrial centers. In some such centers, however, like Lowell, a serious effort was made for decent living conditions and helpful opportunities for development.

All these changes involved a breakup in church ties which all too often,

especially with Protestants, were not effectively restored. Furthermore, the churches of the time were ill adapted to meet the needs of urban factory workers; and the rural churches felt the loss of their members. It was to take several decades for the social message of religion to become widely recognized and intelligently presented and implemented; and as a result a serious breach developed between workers in industry and church organizations. The new tendencies emphasized the things of this world rather than those of the next; sociology—a term first used by Comte in 1838—rather than theology; the outer rather than the inner life; the State rather than the Church.

As to the ultimate effect on Church–State relations, these were also to be many. Industrialization, with its tendency to stratify society and to cause men to lose the sense of local community, resulted in making the workers feel dependent for advance mainly on their union labor organizations, and these were not related to the Church and were often hostile to it. The workers therefore began by the middle of the century to look rather to public agitation and to the State for protection. The beginnings are seen in such movements as the ten-hour-day agitation of the 1820's, the passage of the first child labor law by Pennsylvania in 1848, and the slowly but steadily increasing demands of labor for State protection. The discussions of slavery were a preparation for interference by the State in labor conditions. This found its first striking demonstration in the Civil War and in the Reconstruction Amendments to the Constitution, which most of the Northern Churches strongly supported,[138] but for the ordinary laborers in industry it was not to reach its climax until many decades later.

The new industrial movement, associated as it was with congested living conditions in urban centers, was destined to throw the old American stock into close relation and competition with European and French-Canadian immigrants, raising for the first time in serious form Protestant-Catholic misunderstandings.[139] These not infrequently resulted in conflicts in which the State had to interfere to prevent serious trouble, but ultimately—especially through the contacts of the public school—they were to result in a larger toleration. In a word, the new conditions of life resulted in the old church-and-minister control receding, and that of new factors, including especially public authority, largely taking their place, until the Church could partly regain its hold by readjusting its outlook as described in another section.[140]

Section 8. THE RISE OF JACKSONIAN DEMOCRACY

The inauguration of Andrew Jackson (1767–1845) as President of the United States in 1829 brought to the office for the first time a man of the people—an

opponent of concentrated wealth and of special privilege. Jefferson was in some political respects his precursor, but Jefferson was an aristocrat from Virginia, not a democrat from the West. As Jefferson's election gave impetus to the movement for larger liberty, so Jackson's meant a much larger emphasis on equality —at least among whites—an emphasis which was not, however, to have its universal democratic application, even ideologically, until after Lincoln's Emancipation Proclamation and the Civil War Constitutional amendments. It was natural that Jackson should stoutly oppose special favors for any religious body, and that he should stand for the principle of strict separation of Church and State and of religious freedom, even to opposing the issuing of a Thanksgiving Day proclamation.[141]

Jackson was a man of staunch Americanism, with much of the flavor of the crude Western frontier; a virile and courageous man of integrity and straightforwardness, a born fighter, caring little for books or legal formalities, with meager education and political philosophy, and less culture, but with high ideals, innate dignity—in spite of his crudity of speech—and inflexible purpose to make democracy more democratic. He was the embodiment of what the equalitarians of the West, tired of what the patricians of the East and South stood for, wanted as a leader, and they had the support of most Eastern proletarians and of many of the middle-class group everywhere.

Jackson was bitterly opposed by the Churches with aristocratic and Federalist backgrounds, such as the Episcopalians and Congregationalists. To the old representatives of the Establishment or of the Standing Order he seemed too radical, too close to the people; but since he was a good Presbyterian no such effective campaign could be made against him from the standpoint of orthodoxy as had been made against Jefferson a quarter of a century before. Baptists, Methodists, and other groups close to the people, as well as some branches of his own Church, were inclined to follow him, though his participation in a well-known duel in 1817 outraged the feeling of many religious groups. Leonard Bacon (1802–81), in referring to pulpit attacks on dueling, went so far as to say that "more than anything else, it made the name of brave old Andrew Jackson distasteful to the moral and religious feeling of the people."[142] The Beards, in *The Rise of American Civilization*, state the situation clearly:

> Conforming to the restless spirit of Jacksonian Democracy was a remarkable growth in the Methodist and Baptist churches, especially in the West and Southwest. Undoubtedly J. Franklin Jameson is right in relating the extension of political equality with the prosperity of the religious bodies that reject the Calvinist doctrine of election for the favored few. How could Jacksonian Democrats who exalted the masses of farmers and mechanics believe in a system of theology which condemned most of them to hell in advance without a hearing and reserved heaven for a select aristocracy

favored of God? Of course the Presbyterians also flourished during the middle period, as the Scotch–Irish population increased, but the followers of John Calvin did not maintain the relative strength which they commanded in the colonial age.[113]

But in spite of his somewhat narrow Calvinistic background and the restricted atmosphere of his early years, Jackson had a degree of tolerance in religious matters that merits attention. For instance, in a letter written in 1831, he said:

The first intimation I have recvd that the meeting in this city in February last "to promote the establishment of Sunday schools in the valley of the Missi[ssi]ppi, was sectarian," is from your letter now before me. I was induced to believe, that it was a plan for diseminating the Gospel, by a *union* of *all christians,* in the valley of the mississippi, where it was considered from the late settlement of the country the circulation of the bible the education of the poor and an observence of the Sabath by children might be beneficial to their morales, and in the end prove essentially serviceable to the indigent. These were my understanding of the objects of that meeting as the word *Union* imports.

. . . I am no *sectarian;* tho a lover of the christian religion. I do not believe, that any, who shall be so fortunate as to be received to heaven, thro the atonement of our blessed Saviour will be asked whether they belonged to the Presbetarian, the Methodist, the Episcopalian Baptist or Roman catholic. All christians are brethern, and all true christians, know they are such, *because they love one another.* A true christian, *loves all,* immaterial to what sect, or church, he may belong. The *Union* for promoting Sunday schools in the valley of the Missippi, I understood and believed to have nothing sectarian in its view, but was designed to aid in the Education of the poor and to meliorate the condition and improve the morals of the present and rising generation; as such it had my best wishes, and as such will ever have them. But should it appear that the object is, to give ascendency and preference to any sect or denomination, over others then, my constitutional notions will compel me to frown down such an attempt because in my opinion freedom and an established religion are incompatible with each other etc. etc.[114]

He gave equally strong expression to his tolerant views on religion in correspondence with a woman in Kentucky. On March 12, 1835, one Ellen M. Hanson wrote to him:

Most highly esteemed Sir, May I hope to be pardoned in thus presumeing to address *one* whoes high standing seems to forbid a female's encroaching upon your political affairs which I supose ocupies the most of your time, but relying upon the generosity and urbanity for which you are so much renowned, I dare presume. I do not wish to tire you with my dull prosing therfore I will be as laconick as possible, and in a few words inform you of my motive in writing.

The peace of my Grandmother, (You begin to wonder what you have to do with my grandmother) seems much alloyed from the circumstance of the late arrival of

catholicks to our peaceful and happy land. I would not suffer so much uneasiness from the mere emigration of Catholicks did she not supose *you* at "heart a Roman." Strange unfounded suspicion. She thinks you, (much wronged noble general) will sanction the establishment of an *Inquisition,* in the United States, that you will go hand and hand with the bloody thirsty priest, that you [will be] wiling to imbrue your native land with the blood of your country men. such feelings as these are I believe foreign from your nature, but stop flatery, I loathe particularly to one who knows their merit. The bare mention of our illustrious president, causes her heart to sink, her cheek to grow pale in anticipation of the miseries *you* will entail upon us. would you not deign to answer this scroll if by so doing you would remove or tend [to] meleroate these imaginary miseries these poignant fears. I fear soon that the spire of a Catholick church or the appearance of a priest will fill her with as much terror as the croaking of a Ravin, or the hooting of an Owl of the "Ivy clad tower" did even our *stout* hearted ancestors. . . .[145]

The president's reply is a classic.

Madam, your letter of the 12th instant is just reed. and altho, not in the habit of answering such letters, on your solicitation, and to give peace to the mind of your Grandmother, I make this hasty and laconic reply.

I was.brought up a rigid Presbeterian, to which I have always adhered. Our excellent constitution guarantees to every one freedom of religion, and charity tells us, and you know Charity is the reall basis of *all true religion,* and charity says judge the tree by its fruit. all who profess christianity believe in a Saviour and that by and through him we must be saved. We ought therefore to consider all good christians, whose walks correspond with their professions, be him Presbeterian, Episcopalian, Baptist, methodist or Roman catholic. let it be always remembered by your Grandmother that no established religion can exist under our glorious constitution.[146]

The literary style is characteristic of this sturdy son of the frontier; and so was his tolerance for the various Protestant groups who were getting accustomed to worshiping together in the camp meetings of the period, a custom which was to show itself in that representative frontier development, the Church of the Disciples.[147] But his tolerance for Roman Catholics, also shown by his asking the administrator of the Louisiana diocese to have a special thanksgiving service in his cathedral[148] for the victory of New Orleans, and his attendance at it, placed him somewhat in advance of most of his contemporaries of similar background.

Jackson's presidency lasted only from 1829 to 1837, but the movement he represented began well before the first date—indeed it had some of its roots in the ideals of Jefferson—and its influence lasted many years after the second. It stood for the rights of man as man; for the restoration of political control to plain citizens rather than its retention by entrenched well-to-do Federalists; for

the dominant influence of the frontier and the towns with their democratic life and new industries rather than that of the old-established seaboard plantations and their gentry; for emphasis on a vigorous Americanism, especially to meet the needs of the large number of recently arrived immigrants; for the extension of the suffrage and of public education; for the larger influence of the workingman; for the passing of major control from men trained in the conservatively conducted Episcopal and Congregational Churches of Virginia and Massachusetts to that of the evangelical denominations such as the Methodists, Baptists, and Western Presbyterians.

It would perhaps be true to say, as we note the swing away from the old Federalist–Whig dominance with its inherited tieup in the North with Congregationalism and in the South with Anglicanism, that nonconformists were now in the saddle, and that they were determined to keep Church and State distinct. The program of Jackson was largely of Western origin, but in its various political, social, and industrial reform projects it gained large support from Eastern town dwellers, especially industrial workers and those who represented "the house of Want" as distinct from "the house of Have," as well as from a group of outstanding literary men and publicists such as William Cullen Bryant, James Fenimore Cooper, George Bancroft, Orestes Brownson, Walt Whitman, and John L. O'Sullivan, the editor of the influential *Democratic Review*. O'Sullivan was fond of pointing out the fundamentally Christian character of the Democratic movement because of its sincere effort to improve the lot of the underprivileged.

Indirectly Jackson, by the impetus he gave the cause of democracy, greatly stimulated Protestant churches of the evangelical type, as well as strengthening the view that the rank and file of people, as distinct from the higher ecclesiastics, had the right to govern their own church affairs. Some idea of the change in the electorate for which he was mainly responsible may be seen by noting the influence of his election to the presidency in 1828. In 1824 the aggregate presidential vote was only 356,000; in 1836 it was a million and a half; and in 1840, nearly two and a half million—seven times as much as only sixteen years earlier.[119] The electorate, originally largely limited to men owning property or paying taxes, had been greatly extended. This meant that the various churches close to the masses of the people, such as the Baptists and the Methodists, which had received no favors from the State in the colonial and Revolutionary periods, having never been established anywhere, and being somewhat looked down upon by the old ruling classes, were coming to their own. Their members were to have much larger influence in determining public policy in general, and, more specifically, in wiping out all survivals of old Church-State connections. In a word, the democratic movement in the State would inevitably stimulate the

democratic movement in the Churches and in the public attitude toward them. Congregationalists would no longer dominate public opinion in New England, nor Episcopalians in the South.

On the other hand, though "the rise of the common man" and the gradual decline of the influence of the aristocracy aided the cause of democracy, of popular education, and of the democratic Churches, these movements carried with them some dangers for religious freedom. Eaton, in his admirable survey of *Freedom of Thought in the Old South,* takes the ground that the rise of Jacksonian democracy was a real threat to freedom of thought and expression.[150] This rise meant that people without much historical or cultural background, who cared little for the exact legal phraseology of Constitutional documents intended to protect minority rights, were to be increasingly in the saddle, and that those with radical and even with liberal religious views were likely to suffer. These results were to be seen later in the extremes of the Ku Klux Klan, the antievolution campaign, and "black belt" fundamentalism.

The development of Jacksonian democracy, one of the most striking of the events in our national history, shows that political events often involve theological or ecclesiastical issues. The same idea is true of the Jeffersonian view of equality, as shown in the Declaration of Independence, the guarantee of religious freedom in the Bill of Rights, the antislavery controversy, and many other developments. A recent writer has gone so far as to state that all political problems are at bottom theological.[151]

This combination is brought out clearly in a characteristic utterance of Jackson. The statement that "the voice of the people is the voice of God" was not original with him. Who first used it in America is not known. It was quoted, about a thousand years before the founding of the republic, by Alcuin[152] as a well-known saying—*vox populi vox Dei*—and probably goes back to antiquity; but the fact and context of its use by "Old Hickory" are impressive. It is a good example of that new faith in humanity and human progress, due to man's divine origin, which we have mentioned as one of the historic factors leading to the grant of religious freedom in this country.[153]

> I believe [Jackson said] man can be elevated; man can become more and more endowed with divinity; and as he does he becomes more God-like in his character and capable of governing himself. Let us go on elevating our people, perfecting our institutions, until democracy shall reach such a point of perfection that we can acclaim with truth that the voice of the people is the voice of God.[154]

Jackson's views of democracy were thus influenced by his religion; and on the whole he had strong support from Church people, outside of those of the more conservative social groups, especially in New England and New York.

Among the latter were some clergymen with Federalist convictions, like the Reverend Jonathan Wainwright, later Episcopal Bishop of New York, who opposed his equalitarian views, especially as to the distribution of wealth, which they held to be inimical to religion![155] A goodly number accused him, as they had Jefferson, of being antireligious. This was due to several factors: his general liberalism and independence; his opposition to the anti-Sunday mail campaign; and his refusal to issue the usual fast-day proclamation. His attitude on these and similar matters was due not to a lack of respect for religion but to his determination to keep religion out of politics and to advance the cause of democracy. His unsympathetic attitude toward the protection of the rights of the Cherokee Indians, in whose welfare the missionary societies were so deeply interested, is harder to explain.[156]

These controversies developed two notable publications dealing with the relation of religion to public questions: the Sunday-mail report of Senator Richard M. Johnson, the most noteworthy religious liberty statement of the Jacksonian period, discussed at length in another section;[157] and, on the more conservative side, *An Inquiry into the Moral and Religious Character of the American Government,* which appeared in 1838, and was widely ascribed to Senator Theodore Frelinghuysen, of New Jersey, a respected and prominent advocate of the cause of religion. He went further than most leaders in his position would today in advocating the cause of religion in connection with State affairs; complaining that since the time of Jefferson's refusal to recommend the proposed day of humiliation and prayer in 1807, through Jackson's similar refusal in 1832, there had been an increase in what he called *"political irreligion"* in this country. He took the ground that religion was everywhere *"politically set at naught."*[158] He had been a leader in the movement in opposition to the Sunday transmission of the mails, and felt strongly against Jackson for his refusal to try to prevent the removal of the Cherokees from their Georgia homes.

Jackson's position in the Church world, though he was a convinced Christian believer and churchgoer with large support from the evangelical Churches, was further complicated by the fact that he was also the hero of a small group of vociferous agnostics and atheists, such as Robert Dale Owen, Fannie Wright, and Abner Kneeland.[159]

Section 9. THE EARLY CO-OPERATION IN BEHALF OF THE INDIANS

The problem of the Indian is one in which the churches have long been deeply interested. Among the landmarks in the effort to help the original inhabitants of this country we must remember with special gratitude the heroic work of

John Eliot (1604–90) in translating the Bible into the Algonquin language—the first Bible printed in North America; the work of Christian industrial education undertaken in Stockbridge, Massachusetts, in the mid-eighteenth century by John Sergeant (1710–49), David Brainerd (1718–47), and Jonathan Edwards (1703–58); the attempt to educate the Indians both at Harvard and at Dartmouth; and the heroic efforts made by Roman Catholic missionaries to Christianize them—by Spanish Franciscans in Florida and Upper California, French Jesuits in New York and the South, and Spanish missionaries in the Southwest. In some ways no factor was more important than the work and spirit of the Quakers and the Moravians. The friendly attitude of the Quakers goes back to the early days of the colony of Pennsylvania. In the letter of William Penn (1644–1718) accompanying the directions for its government in 1681, he says that God hath been pleased

> to make me concerned in your part of the world, and the king of the country where I live hath given unto me a great province, but I desire to enjoy it with your love and consent, that we may always live together as neighbors and friends.[160]

This was followed, as is well known, by the Elm Tree Treaty, by which Penn and his associates, unarmed, met the Indians, and, addressing them as children of the Common Father, concluded in a simple ceremony on the banks of the Delaware the well-known treaty of peace and friendship.

The Moravians, a deeply consecrated missionary group, were also active in working for the Indians as early as the second third of the eighteenth century.

Under the Articles of Confederation of 1777 Congress was given exclusive power of "regulating the trade and managing all affairs with the Indians, not members of any of the states . . . ,"[161] and the Constitution of 1787 empowered it "To regulate Commerce . . . with the Indian Tribes."[162] This was highly important, and led first to the appointment of a Superintendent of Indian Trade (1806), and later, when this office was abolished, to the Bureau of Indian Affairs (1824), the Commissionership of Indian Affairs (1832), and the Department of Indian Affairs (1834). The last was under the War Department until the Department of the Interior was established in 1849.[163]

Let us now turn to missionary activity within this general framework of government relations. The first official recognition[164] given to such work among the Indians by the Federal government was a recommendation in 1789 by the Secretary of War, General Henry Knox (1750–1806), that missionaries should be sent to the Indian tribes on the frontier. He wrote:

> Missionaries, of excellent moral character, should be appointed to reside in their nation, who should be well supplied with all the implements of husbandry, and the necessary stock for a farm.

These men should be made the instruments to work on the Indians; presents should commonly pass through their hands, or by their recommendations. They should, in no degree, be concerned in trade, or the purchase of lands, to rouse the jealousy of the Indians. They should be their friends and fathers.

Such a plan although it might not fully effect the civilization of the Indians, would most probably be attended with the salutary effect of attaching them to the interest of the United States.

It is particularly important that something of this nature should be attempted with the Southern nations of Indians, whose confined situation might render them proper subjects for the experiment.

The expense of such a conciliatory system may be considered as a sufficient reason for rejecting it;

But when this shall be compared with a system of coercion, it would be found the highest economy to adopt it.[165]

The early series known as *American State Papers, Indian Affairs,*[166] shows that the missionaries were frequently used in making treaties with the Indians and in quieting disturbances. Jefferson gave them miscellaneous agricultural implements and occasionally made small financial contributions from public funds for the support of missions among them. These grants, coming from the fund provided by Congress in 1802, were for the civilizing of the Indians. An example of such gifts were that provided for in the treaty signed at Vincennes, August 13, 1803, by William Henry Harrison (1773–1841), then governor of the Indian Territory, who represented the United States government, and the head chiefs and warriors of the Kaskaskia Indians, who represented all the Illinois tribes. It includes the following clause:

. . . *And whereas* the greater part of the said tribe have been baptised and received into the Catholic church, to which they are much attached, the United States will give, annually, for seven years, one hundred dollars towards the support of a priest of that religion, who will engage to perform for said tribe the duties of his office, and also to instruct as many of their children as possible, in the rudiments of literature. And the United States will further give the sum of three hundred dollars, to assist the said tribe in the erection of a church. . . .[167]

In 1819 "An act making provision for the civilization of the Indian tribes adjoining the frontier settlements" was passed by Congress, placing certain funds—at first $10,000—at the discretion of the president. John C. Calhoun (1806–59), then Secretary of War, announced that this would be distributed entirely among missionary societies.[168] The government also met two-thirds of the expenses of erecting certain buildings for the educational work of the missions.[169] The plan worked well at first; then the politicians became active, and trouble began. The beginnings, however, were of great significance, since they

represented, other than a small early grant to Dartmouth College for the education of Indians, the foundations of a policy that was to become prominent after the Civil War.

The missionary boards aided and abetted these contributions from government. Several denominations had followed the Moravians and the Quakers in establishing special work among the Indians, such as the Baptists in 1807, the American Board in 1810, the Episcopalians in 1815, and the Methodists in 1816.[170] Some of these hesitated later, because of the importance of maintaining the separation of Church and State, to accept the responsibility of having their missionaries serve as Indian agents, but few then seemed to think there was anything inconsistent or dangerous in accepting grants of money from the Federal government. For instance, the American Board of Commissioners for Foreign Missions, very influential among our missionary societies, in a memorial to the House of Representatives on March 3, 1824, said:

> At the annual meeting of this board, at Boston, in September last, the subscribers [John Cotton Smith, Jonas Platt, Jedediah Morse, Stephen Van Rensselaer, and Jeremiah Evarts] were appointed a committee "to prepare and present a memorial to the Government of the United States, on the general subject of the civilization and moral improvement of the Indian tribes within the limits of our national territory; stating, summarily, what this board, and other boards for similar purposes, of different denominations, have done, and are doing, for the benefit of the said Indians; the success of their efforts hitherto, and the encouraging prospects as to the future, provided means are furnished adequate to the support of their contemplated operations; and soliciting such pecuniary aid from the Government as, in their wisdom, they shall see fit to grant."[171]

These and other similar efforts, with which Congress appears to have been most sympathetic, were successful, for the War Department records show $12,708 thus contributed to missionaries among the Indians in 1824, and $13,620 the following year. These represented, however, less than 8 per cent of what the missionary societies received through private contributions.[172]

Of early missionaries to the Indians who rendered large service to the government, two may be taken as typical: one a Protestant, the Reverend Samuel Kirkland (1741–1808); the other a Roman Catholic, the Jesuit Father Pierre-Jean De Smet (1801–72). Kirkland did his great work in New York state in the second half of the eighteenth century; De Smet in the Northwest in the second and third quarters of the nineteenth.

Dr. Samuel Kirkland was a Congregational minister who devoted most of his life to the Oneida Indians of New York. After the Battle of Lexington he was formally requested by the Provincial Congress of Massachusetts to ob-

tain, if possible, the friendship of the Six Nations, and succeeded in securing the support of the Oneidas. General Washington, in a letter addressed to the Continental Congress in 1775, said:

> I cannot but intimate my sense of the importance of Mr. Kirkland's station, and of the great advantages which may result to the united Colonies from his situation being made respectable. All accounts agree that much of the favorable disposition shown by the Indians may be ascribed to his labor and influence.[173]

Later, in a letter to Archbishop Carroll, under date of April 10, 1792, he wrote, "The Indians of the Five Nations are, in their religious concerns, under the immediate superintendence of the Reverend Mr. Kirkland. . . ."[171] He served as chaplain during the war, but after the declaration of peace resumed his missionary work, and in 1785 received a grant of land from Congress for his services. This was supplemented by a gift from the state of New York, and by grants from the Indians.

In 1791 he brought forty Indians of the Six Nations to Philadelphia to consult Congress as to the best method of meeting their needs. He was frequently used by the government in connection with preventing disorders, making treaties, and in other ways. Hamilton College, which he established in 1793 as Hamilton Oneida College, was originally planned to be for the education both of American and Indian youth.

Pierre-Jean De Smet was in some ways the most useful and representative figure, as far as Church-State relations are concerned, in the whole field of Indian history. As Kirkland was the missionary most frequently and effectively used by the Federal government at the time of its formation, so was De Smet two generations later. He was a Jesuit missionary living up to the best tradition of his order for interest in the North American Indian. Born in Belgium in 1801, he migrated to the United States in 1821. Two years later, at the suggestion of the government, which was much interested in missionary work in the West as a factor in preserving order among the Indians, a Jesuit establishment was projected at Florissant, near St. Louis, Missouri. De Smet was one of the pioneers in this work; his missionary tours began in 1838. It seems quite in keeping with his interests to find that at this time he visited the Sioux Indians to arrange for peace between them and the Pottawatomies; for aside from the founding and support of missions, such as those among the Nez Percés of the Flathead country, the greater part of his life was to be devoted to peace efforts—peace among Indian tribes and between Indians and the government. A successful early example of this was in 1846, when he brought the Crows and Blackfeet together and induced them to conclude peace with other Indian tribes. From the middle of the century on he was frequently used both

by the Indians in presenting their case to the United States government, and by the government as its representative in concluding treaties with the Indians. He was more than any other person of the period the recognized intermediary between the red men and the "great father" in Washington and the American people whom he represented.

For instance, in 1851 the Indians, owing to the arrival of a large number of white settlers in California and Oregon, had grown dangerously restless and were assuming an attitude of hostility to the whites. They called a congress of many thousand Indians near Fort Laramie. De Smet, at the request of the government, made the long journey and brought about a satisfactory understanding.

Again in 1858 he went as a chaplain of the government forces in their expedition against the Mormons in Utah, and at its close went on to Washington and Oregon to prevent Indian uprisings. Here his presence had the necessary effect, as the Indians were always willing to listen to "Black-Robe," as they called him. Similarly, in August, 1862, at the request of the government, he made a tour of the Northwest to prevent threatened trouble, but finding that a punitive expedition was in prospect he refused to continue farther on the expedition.

Again in 1867, at the request of the government he went to settle serious difficulties on the part of the Indians with the white men, being asked to "endeavor to bring them back to peace and submission, and prevent as far as possible the destruction of property and murder of the whites."[175]

But his most important mission was his visit with the peace commissioners to the Sioux in 1868. As General Stanley, in command of the expedition, stated: "Father De Smet alone of the entire white race could penetrate to these cruel savages and return safe and sound."[176] Consequently the commissioners allowed him to go alone, and he interviewed several thousand warriors under the lead of Sitting Bull. His advice was adopted, and representatives were sent to meet the peace commission, as a result of which a treaty of peace was signed by all the chiefs on July 2. This was considered a remarkable achievement.

Such were some of the ways in which Father De Smet promoted the best interests of Church and State. He was so devoted to the Indians that he had their entire confidence. How many tens of thousands of miles he travelled on his missionary journeys is not known, but his writings provide material of the greatest value for a study of early conditions in the Northwest. Any study of the history of the Indians, or of early days in the West, will uncover frequent reference to the *Life, Letters and Travels of Pierre-Jean De Smet, S.J.*, which contains a mass of firsthand information. De Smet also made many trips to Europe to secure support for the Indian missions, and wrote several books of

importance which attracted interest to them and to the West. Incidentally, it should be remembered that it was from him that Brigham Young learned about the possibilities of the Salt Lake region as a place of settlement.[177]

But the relations between Church and State over Indian questions were not always as friendly as under the influence of Kirkland and De Smet. There were times of serious friction between the two great powers dealing with the Indians, and at these times the Churches seem to us today to have generally been right. They were always trying to guard the Indians from exploitation by commercial interests or from the neglect, incompetence, or occasional dishonesty of Indian agents, or from selfish government policy.

The most critical single situation which arose in the early period had to do with the Cherokee Nation and the successful efforts of the state of Georgia to have them removed from lands which the white citizens of the state wished for their own use. The Churches, as we shall see, took a very active part in trying to prevent this breaking of treaties. Here are the essential facts.

Section 10. THE CHEROKEE INDIANS—A STRUGGLE BETWEEN CHURCH AND STATE

Early in the eighteenth century the Cherokees occupied, or claimed, all the territory south of the Ohio River and west of the Great Kanawha, and extending south to include the northern sections of Georgia and Alabama. But owing to the western migration of white settlers and the resulting Cherokee wars, the tribe had by 1819 through various treaties given up all its possessions except those in the South—mostly in Georgia. Here they determined to make a stand, and to have their clear rights under the treaty of 1791 with the United States observed. Under the active guidance of missionaries from New England, and with the aid of the Federal authorities, they had so far developed the arts of civilization that in 1827 they organized a government with a written constitution.

But the state of Georgia wanted the rich lands of the tribe, in which gold had been found. It was undoubtedly in a difficult position, having what was virtually an independent Indian State in its midst. In 1828 and 1829 it extended its laws to cover the Indians and demanded the withdrawal of the Cherokees to some western reservation, and the handing over of their lands to the state. A bitter legal fight ensued. The Supreme Court of the United States was repeatedly appealed to, as the Cherokees could get no help from President Jackson.

The plight of the Cherokees in their conflict with the state of Georgia was much before Congress, especially in the 'twenties and early 'thirties. The

advances of the tribe in the arts of civilization and the cruelties involved in the attempt of the state of Georgia to dispossess them from what remained of their ancestral lands made a strong appeal to the Christian people of the nation. The public records of the time contain many reports, appeals, and petitions which show admiration for the progress made by this civilized and progressive Indian tribe, whose young men had fought bravely with Jackson against hostile Indians in the War of 1812.

Its position is presented in an appeal addressed to the United States Senate in 1822. "The Cherokees," said their chiefs,

> have turned their attention to the pursuits of the civilized man: agriculture, manufactures, and the mechanic arts and education are all in successfull operation in the nation at this time; and while the Cherokees are peacefully endeavoring to enjoy the blessings of civilization and Christianity on the soil of their rightful inheritance, and while the exertions and labors of various religious societies of these United States are successfully engaged in promulgating to them the words of truth and life from the sacred volume of Holy Writ, and under the patronage of the General Government, they are threatened with removal or extinction. . . . We appeal to the magnanimity of the American Congress for justice, and the protection of the rights and liberties and lives of the Cherokee people. We claim it from the United States by the strongest obligation which imposes it on them—by treaties: and we expect it from them under that memorable declaration, "that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."[178]

A War Department report in 1825 regarding the Cherokees stated that "The Christian religion is the religion of the nation."[179] It added that Presbyterians, Methodists, Baptists, and Moravians were the most numerous denominations.

Helen Hunt Jackson (1830–85), in *A Century of Dishonor*, gives a picture of the happy conditions existing in the tribe prior to their forced removal West.

> . . . Every family had its farm under cultivation. The territory was laid off into districts, with a council-house, a judge, and a marshal in each district. A national committee and council were the supreme authority in the nation. Schools were flourishing in all the villages. Printing-presses were at work. . . . They were enthusiastic in their efforts to establish and perfect their own system of jurisprudence. Missions of several sects were established in their country, and a large number of them had professed Christianity and were leading exemplary lives. There is no instance in all history of a race of people passing in so short a space of time from the barbarous stage to the agricultural and civilized.[180]

When the matter of removal came before the United States Senate, the sentiment of the Christian forces of the country against the proposal was crystallized by two men—Senator Theodore Frelinghuysen (1787–1861) of New Jer-

sey, who served as president of the American Board and of the American Bible Society and gained the title among his contemporaries of "the Christian statesman," and Jeremiah Evarts (1781–1831). Evarts was the foremost champion of the Indians in this controversy. Having served for ten years as the editor of the *Panoplist*, in many ways the most influential of American Protestant journals, and being at the time editor of the *Missionary Herald* and secretary of the respected American Board of Commissioners for Foreign Missions—which included the Indians in the scope of its work—he could speak with authority for the Christian conscience of the country.

Evarts' articles over the signature of William Penn in the *National Intelligencer*, beginning in 1829, were highly praised by Chief Justice Marshall, who is quoted as saying that they represented a "most conclusive argument." They were also extensively republished, perhaps more extensively than any other series of articles on a public matter that had been printed in this country since the formation of the union.[181]

In one of these essays on the rights of the Cherokee Indians, published in August, 1829, Evarts said in part:

> These are the men whose country is to be wrested from them, and who are to be brought under the laws of Georgia without their own consent. These civilized and educated men;—these orderly members of a society, raised, in part, by the fostering care of our national government, from rude materials, but now exhibiting a good degree of symmetry and beauty;—these laborious farmers and practical republicans;—these dependent allies, who committed their all to our good faith, on the "guaranty" of Gen. Washington, the "assurance" of Mr. Jefferson, and the re-assurance of Gen. Jackson and Mr. Calhoun, sanctioned, as these several acts were, by the Senate of the United States;—these "citizens of the Cherokee nation," as we called them in the treaty of Holston;—these fellow Christians, regular members of Moravian, Presbyterian, Baptist, and Methodist churches, *fellow-citizens with the saints and of the household of God*, are to be suddenly brought under the laws of Georgia, according to which they can be neither witnesses nor parties in a court of justice. Under the laws, did I say? It is a monstrous perversion to call such a state of things living under law. They are to be made outlaws on the land of their fathers; and, in this condition, to be allowed the privilege of choosing between exile and chains.
>
> But who are the men that impose so fearful an alternative? and what is the government that hesitates to redeem its pledge? Is it some rotten Asiatic despotism, sinking under the crimes and corruptions of by-gone centuries, feeling no responsibility and regarding no law of morality or religion? Not so. It is a government which sprung into existence with the declaration "that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." From a government thus established, this flagrant wrong is apprehended; and from a people who boast that they are the freest

and most enlightened community on earth; who insist on the right of every community to govern itself; and who abjure the very idea of foreign dictation.

Government has arrived at the bank of the Rubicon. If our rulers now stop, they may save the country from the charge of bad faith. If they proceed, it will be known by all men, that, in a plain case, without any plausible plea of necessity, and for very weak and unsatisfactory reasons, the great and boasting Republic of the United States of North America *incurred the guilt of violating treaties;* and that this guilt was incurred when the subject was fairly before the eyes of the American community, and had attracted more attention than any other public measure since the close of the last war.

In one of the sublimest portions of Divine Revelation, the following words are written:

Cursed be he that removeth his neighbor's landmark: and all the people shall say, Amen.

Cursed be he that maketh the blind to wander out of the way: and all the people shall say, Amen.

Cursed be he that perverteth the judgment of the stranger, fatherless, and widow: and all the people shall say, Amen.

Is it possible that our national rulers shall be willing to expose themselves and their country to these curses of Almighty God? . . .[182]

The New York memorial on the Cherokee problem was also prepared by Mr. Evarts, as were the two memorials of the American Board to Congress, sent in January, 1830, and in 1831. The board advised the missionaries to remain with the Cherokees, even though this might expose them to imprisonment by the state of Georgia. It is characteristic of Mr. Evarts' deep interest in this problem that in a list which he left of subjects for daily intercession were included the Indians and the government of Georgia.[183] But perhaps his most important single service to the Cherokee Indian cause was the preparation of the "Address to the People of the United States, by the General Council of the Cherokee Nation," July, 1830. This he handed to their representatives in Washington. After due consideration it was accepted by the governing authorities of the tribe, who added the two closing paragraphs. It is given in full in the biography of Mr. Evarts, and will constitute for all time an appealing and authoritative statement of the Cherokee position.[184]

But the efforts of Evarts, Frelinghuysen, and others were not sufficient to prevent the Indians from losing their fight. This was the more to be regretted because in Washington's message to the Senate forty years earlier (August 11, 1790) he clearly showed the obligations of the Treaty of Hopewell, signed by commissioners of the government and the Cherokee Indians in 1785, and followed by almost identical treaties with the Choctaws and Chickasaws. He called attention to the fact that "the said Cherokees placed themselves under

the protection of the United States, and had a boundary assigned them." The Senate, after receiving his message, resolved that if the new boundary were arranged, as was later done, "The Senate do advise and consent solemnly to guarantee the same."[185] But in view of the desire of the inhabitants of Georgia, or at least of an influential group among them, to possess the Indians' land, these solemn agreements were considered by the state little more than Bethmann-Hollweg's "scrap of paper" in guaranteeing the neutrality of Belgium in 1914.

On December 29, 1829, the state of Georgia passed a law whose object was stated to be adding the territory in the occupancy of the Cherokee Indians to the adjacent counties of Georgia, and "to annul all laws and ordinances made by the Cherokee nation of Indians."[186]

On April 24, 1830, Senator Frelinghuysen, in the course of a long debate,[187] proposed two provisos to the Federal act designed to carry this arrangement into effect:

> Provided always, that until the said tribes or nations shall choose to remove, as by this act is contemplated, they shall be protected in their present possessions, and in the enjoyment of all their rights of territory and government, as heretofore exercised and enjoyed, from all interruptions and encroachments.
>
> And provided also, That, before any removal shall take place of any of said tribes or nations, and before any exchange or exchanges of land be made as aforesaid, the rights of any such tribes or nations in the premises, shall be stipulated for, secured, and guaranteed by treaty or treaties as heretofore made.[188]

Both provisos were rejected by the United States Senate.

The constitutionality of Georgia's action, as virtually approved by the Senate and President Jackson, then came before the Supreme Court in two famous cases—*Cherokee Nation* v. *Georgia* and *Worcester* v. *Georgia*. In the first[189] the court showed its sympathy with the Indians, but the majority opinion was to the effect that since the Cherokees were neither citizens of the United States, nor, as they contended, a foreign nation, they were not competent to appear as a party to the suit before the court.[190] In the second case, in 1832, Chief Justice Marshall handed down the decision of the court, in favor of the Reverend Samuel A. Worcester (1798–1859) and certain other devoted missionaries among the Cherokees who continued loyal to their interests. They had been arrested for living in the Cherokee country without taking an oath of allegiance to the state of Georgia and obtaining from it the specified license. Two of the missionaries accepted a pardon, but Worcester and a colleague declined to do so and contested the state's authority.[191] The court now decided that the Cherokees were a nation under the protection of the United States and free from the jurisdiction of Georgia; but President Jackson, who was entirely un-

sympathetic to the Indians' claims, refused to enforce the decision, and Georgia did not recognize it.[192] It was in this connection that Jackson is said to have made his famous remark: "John Marshall has pronounced his judgment; let him enforce it if he can."[193]

The fact that President Jackson's sympathies continued with the state of Georgia made it difficult to prevent the threatened removal. On December 29, 1835, the treaty ceding their lands in Georgia was signed at the old Cherokee capital of New Echota—named after their historic town of refuge—by representatives of a minority of the tribe. It was ratified by the Senate by a small margin and was proclaimed by the president on May 23, 1836. Accepting $5,000,000 and 7,000,000 acres of land west of the Mississippi, some 15,000 started in 1838 their sad trek—the "trail of tears"—to Oklahoma, but only after a tragic experience of concentration camps and armed force.[194]

The story makes Americans of today blush with shame. One of the heroes of the Indians was Elias Boudinot (*c.* 1803–1839), a Cherokee named after the great philanthropist. He was a force for education, good will, and Christianity among his people, and he tried to serve as a conciliatory influence between them and the government. He saw that the Cherokees' only safety was in removal to new homes in the West. His education at the remarkable Mission School at Cornwall, Connecticut, his romantic marriage to a New England woman, his character and public services, have been recently described sympathetically by a representative American historian.[195]

We will conclude this sad story by letting the author of *A History of American Christianity* tell of the efforts of the forces of the Church to prevent the State from going back on its plighted word to a much-respected Christian tribe:

> . . . American Christianity was most conspicuously represented in this conflict by an eminent laymen, Jeremiah Evarts, whose fame for this public service, and not for this alone, will in the lapse of time outshine even that of his illustrious son. In a series of articles in the "National Intelligencer," under the signature of "William Penn," he cited the sixteen treaties in which the nation had pledged its faith to defend the Cherokees in the possession of their lands, and set the whole case before the people as well as the government. But his voice was not solitary. From press and pulpit and from the platforms of public meetings all over the country came petitions, remonstrances, and indignant protests, re-inforcing the pathetic entreaties of the Cherokees themselves to be protected from the cruelty that threatened to tear them from their homes. In Congress the honor of leadership among many faithful and able advocates of right and justice was conceded to Theodore Frelinghuysen, then in the prime of a great career of Christian service.[196]

Later development of Church–State problems in connection with the Indians will be dealt with in other chapters.[197]

Section 11. THE INFLUENCE OF TRANSCENDENTALISM AND "REFORM"

Transcendentalism as a definite New England movement may be dated from September, 1836, when a small group of distinguished men, mostly Unitarian in background, living in and near Boston, met at the home of George Ripley (1802–80), a liberal Unitarian minister. They were interested both in the higher life of the spirit—the communion of every soul with its Maker—and in improving the lot of their fellow men. In the latter, which most interests us in this section, they found Boston congenial soil. Here in 1840 was held a meeting of the Friends of Universal Reform. Ralph Waldo Emerson (1803–82), the philosopher of the reformers, thus described this group, which evidently contained many much less sophisticated than the Transcendentalists.

> If the assembly was disorderly, it was picturesque. Madmen, madwomen, men with beards, Dunkers, Muggletonians, Come-outers, Groaners, Agrarians, Seventh-Day Baptists, Quakers, Abolitionists, Calvinists, Unitarians, and Philosophers—all came successively to the top, and seized their moment, if not their hour, wherein to chide, or pray, or preach, or protest.[198]

The broad social purpose of the Transcendentalists is shown as early as 1841, when the organ of their leaders, *The Dial,* stated: "The triumph of reform is sounding through the world for a revolution of all human affairs."[199] The forces of idealism were now ready to lock horns with the social tensions of the time and try to bring about a new day for humanity. Curti, in a chapter on "New Goals for Democracy," finds the roots of this new reform movement in four factors: the Enlightenment, Romanticism and Utilitarianism, Social and Economic Tension, and the Example of Christ.[200] It is impressive to find how often in American history the natural-rights theories of the Enlightenment and the Christian teaching unite in important movements for social welfare.

On March 3, 1844, Emerson read a lecture in Boston on "New England Reformers." This was significant as showing the new spirit that had developed since about the second quarter of the century. He was struck "with the great activity of thought and experiment" in his section of the country "during the last twenty five years."

> What a fertility of projects for the salvation of the world! One apostle thought all men should go to farming; and another, that no man should buy or sell; that the use of money was the cardinal evil; another, that the mischief was in our diet, that we eat and drink damnation. . . . Others attacked the system of agriculture, the use of animal manures in farming; and the tyranny of man over brute nature; these abuses polluted his food. . . . With these appeared the adepts of homoeopathy, of hydropathy,

of mesmerism, of phrenology, and their wonderful theories of the Christian miracles! . . . Others attacked the institution of marriage, as the fountain of social evils . . . ; and the fertile forms of antinomianism among the elder puritans seemed to have their match in the plenty of the new harvest of reform. . . .

Following, or advancing beyond the ideas of St. Simon, of Fourier, and of Owen, three communities have already been formed in Massachusetts on kindred plans, and many more in the country at large. They aim to give every member a share in the manual labor, to give an equal reward to labor and to talent, and to unite a liberal culture with an education to labor. . . .[201]

Emerson, himself a strong advocate of reform and intimate with most of its exponents, summed up his views on this subject in his address on "Man the Reformer," when he exclaimed, "What is a man born for but to be a Reformer, a Re-maker of what man has made . . . ?"[202]

Such ideas had appeared before in American history, but never were they so prominent or influential as in the Boston of the 1830's and 1840's. Cotton Mather (1662/63–1727/28) more than a century earlier had urged his hearers to be useful citizens. When pastor of the North Church in Boston he advocated a plan of voluntary associations in every neighborhood to watch and suppress evil; attacked intemperance; started a school for the education of Negroes; fostered public health measures through inoculation against smallpox; and wrote his broadly influential *Essays To Do Good.*

Benjamin Franklin (1706–90), who highly praised this book by Mather, tried to reform everything from stoves, to society, to theories of the universe. The Quakers also had been keen about reforming social abuses, especially in our treatment of Indian and Negro, and in the abolition of war. Benjamin Rush (1745–1813) had been a strong opponent of slavery and the liquor traffic. And these and scores of other reforms had not only their vociferous advocates but their effective organizations in Massachusetts a century or more ago.

In these volumes we must deal separately at some length and in different places with the more important of these movements as they bear in any way on Church–State relations, on religious freedom, or on the contributions made by the religious forces to public welfare. Here we shall merely list some that had special significance:

The beginnings in America of effective urban social-welfare work by the Churches through the appointment in 1826 by the American Unitarian Association of the Reverend Joseph Tuckerman (1778–1840) as minister-at-large in Boston—an appointment that led the way to making the city foremost in America in the administration of charity.[203]

The reforming pastorate of Lyman Beecher (1775–1863) in the Hanover

Street Church from 1826 to 1832, with the remarkable stimulus it gave to the temperance movement, the education of the West, and various reforms.[204]

The development of Americanization agencies to meet the needs of the new immigrants (which the Roman Catholic Church was striving to serve through its new parochial schools), and to overcome through the preaching of tolerance the extreme anti-Catholic feeling coming to the surface in most parts of the country.[205]

The improvements in the opportunities for women's education as shown by the founding of the first American coeducational high school, in Massachusetts in 1826, and the first well-established college for women, Mount Holyoke, in 1836, the same year in which the first college to grant degrees to women (1840) was chartered in Macon, Georgia.[206]

The beginnings of militant abolitionism with the publication by William Lloyd Garrison (1805–79) in Boston of *The Liberator* in 1831.[207]

The movement for free public education that resulted in Horace Mann (1796–1859), its greatest exponent, being made secretary of the newly formed and highly influential Massachusetts State Board of Education in 1837.[208]

The national movement, led from Boston by Dorothea Dix (1802–87), after her return there from Europe in 1837 (being encouraged by Dr. William Ellery Channing, her pastor, to devote herself to the improvement of conditions among prisoners, paupers, and the insane), which resulted in the establishment by many of the states of well-conducted asylums for mental cases.

The formation of the religio-Communistic societies referred to by Emerson, of which Brook Farm (1842) was the best known, though others had more significant social-economic influence.[209]

These are but examples of the reform movements of the 'thirties and 'forties through which Christian idealism influenced the State and public life. Others had to do with the reform of diet and dress; the abolition of war, imprisonment for debt, and capital punishment; woman's rights; and improvements in the conditions of labor and of industrial relations. The lyceum idea, beginning with the work of Josiah Holbrook (1788–1854) at Millbury, Massachusetts, in 1826, in five years extended throughout New England and entered New York. It was soon to become a national pre-Chautauquan movement. Appealing largely to the more liberal in the Church public, though generally avoiding purely religious and political issues, it greatly stimulated those reforms of which Boston was the major incubating center. The lyceum played a large part in the discussion of temperance, history, philosophy, science, social problems (including slavery), ethics, books, and the need of public libraries. It was the first large-scale adult-education movement started in this country. Emerson was the most distinguished of its lecturers, going about the country

spreading the views of Boston's literary elite, especially those of culture, progress, idealism, the overcoming of social abuses, and tolerance. As to the last, his interest and that of some other Transcendentalists in the fundamental unity of all true religions was destined to help break down the intellectual barriers of creed. He was able to quote St. Augustine's *Retractions* effectively on this point, thereby introducing what was virtually a new emphasis in America, though there are traces of it in the writings of Thomas Jefferson, and in some other early students of human thought. Speaking in 1869 at a typical Boston organization of the middle eighteenth century, the Free Religious Association, he said:

> . . . We have had not long since presented us by Max Müller a valuable paragraph from St. Augustine,—not at all extraordinary in itself, but only as coming from that eminent Father in the Church, and at that age,—in which St. Augustine writes: "That which is now called the Christian religion existed among the ancients, and never did not exist from the planting of the human race until Christ came in the flesh, at which time the true religion which already existed began to be called Christianity." I believe that not only Christianity is as old as the Creation,—not only every sentiment and precept of Christianity can be paralleled in other religious writings,—but more, that a man of religious susceptibility, and one at the same time conversant with many men,—say a much-travelled man,—can find the same idea in numberless conversations. The religious find religion wherever they associate. When I find in people narrow religion, I find also in them narrow reading. . . .[210]

Suffice it in this brief summary to call attention to two facts. The reform movements of the time centered largely in Boston; and they were mostly inspired by men deeply influenced by the Christian tradition, who were or had been leaders in liberal churches—chiefly Unitarian and Congregational.

As to the first factor, it is interesting to note how cities rise and fall in leadership in social reform. In the earliest days of the colonies Congregational Boston took the lead, but in the Revolutionary period Quaker Philadelphia led. The leadership then returned to Boston, where it continued for half a century, but later came to New York, with Washington, Chicago, and other cities, in very recent years also playing a large part.

As to the second factor, it would be interesting to trace in some detail the historical background of Emerson's conviction that man was born to be a reformer. We should find it in the Hebrew prophets, the Greek philosophers, the teachings of Christ, the early Christian community, the Catholic Church, the Protestant Reformation—especially the Geneva of Calvin—the Puritan Commonwealth, the philosophy of the Enlightenment,[211] the Declaration of Independence,[212] the Unitarianism[213] of William Ellery Channing—all these were elements which had directly or indirectly, consciously or unconsciously,

profoundly influenced the Boston reformers of a century ago. The presence of acute social problems brought about by the threatened spread of slavery,[214] the development of the West,[215] the new immigration[216] with its related urbanization and industrialization, the extension of the right of suffrage, —all created an acute need to improve conditions in the body social and political, while the growth of Unitarianism in a region with high intellectual and moral traditions made Boston a field ripe for the reform harvest. This was duly produced; and, though there were many weeds and some overcultivation, the crop did the world much more good than harm, and gave an interesting example of the Church—using the word in a broad sense—trying to influence the State and its many social problems. I refer to the Church "in a broad sense," for in many cases the reform movements were developed by men and women detached from the orthodox Churches, who had nonetheless all been influenced by the Christian spirit. Emerson—himself a Unitarian minister in his early days—saw this clearly. In the address on "New England Reformers," already quoted, he says that the attention of those who study the men he was describing

> must be commanded by the signs that the Church, or religious party, is falling from the church nominal, and is appearing in temperance and non resistance societies, in movements of abolitionists and of socialists, and in very significant assemblies, called Sabbath and Bible Conventions,—composed of ultraists, of seekers, of all the soul of the soldiery of dissent. . . .[217]

Be that as it may, the churches of New England, especially those that stemmed from the old Separatist dissent—Congregationalists, Unitarians, Universalists —were represented by ordained ministers of religion in nearly all the new movements. Curti sums the matter up fairly by saying that although at the time "the religious interest was more frequently regarded as an anchor to the past than a propeller to the future," "a small but active group of the clergy" was considered of importance "in almost every reform cause."[218]

The Roman Catholics, however, were generally conspicuous by their absence. This was due partly to their absorption in the spiritual shepherding of their own flock, especially caring for the new immigrants, and also to their opposition to "isms" of almost all kinds. Two quotations will indicate this tendency. The first is from the *Pilot* of Boston, the leading Catholic paper in New England, which was always opposing abolitionism and most "reform" movements.

> As a general thing wherever you find a free-soiler, you find an antihanging man, woman's rights man, an infidel frequently, bigoted Protestant always, a socialist, a red republican, a fanatical teetotaller, a believer in mesmerism, Rochester rappings, and in every devil but the one who will catch him. You get in a rather dirty set, you perceive, when you join their ranks.[219]

This was in 1851. A few years later, 1857, we find one of the few early Roman Catholic Congressmen, John Kelly of New York, denying in a speech in the House that Fourierism and other suggested radical reform programs came from the new immigrants, referred to New England as the "special nursery for all these projects for reorganizing society," and added:

> The Catholics of the United States have ever shown themselves faithful to this their country, ready to take their share of the public burden in peace or war—lovers of the Union—neither Abolitionists nor fanatics: but impressed with a sense of responsibility to a higher power which has commanded them to "give unto Caesar the things that are Caesar's" and who will demand a vigorous account of our exercise of political power as of any other placed in our hands.[220]

The reformers to whom we have referred were for the most part certainly not orthodox Christians; but their ideals had been mainly formed under the influence of the Christian churches, and in the end what was of most value in their teaching was to be assimilated by the churches and to influence the State. In many ways the most influential of those with a church background was the Reverend Theodore Parker (1810–60).[226] He sums up in his own person many of the strong points and some of the limitations of the reform movement which we have been discussing. After studying at Harvard he was ordained in 1837 as minister of a Unitarian church in West Roxbury, and gradually became known as a reformer and iconoclast. The most influential period of his life was probably that from 1846 on, when he served as minister of the Melodeon (a Congregational Society) in Boston, and from 1852 on, when the society took possession of the Music Hall and gave him a pulpit and platform from which he could influence Boston and through it the nation.

He was independent of sectarian bonds, deeply religious without being Christian in an orthodox sense, and single-minded in his devotion to raising the lot of humanity through religion, morality, education, and social reform. Peace, temperance, the relief of poverty, the rights of labor, socialism, the abolition of slavery, the advancement of the idea of a democratic society, all interested him. Unlike Emerson he not only proclaimed ideals, but tried, through personal contact, to help the poor, the downtrodden, the guilty, and especially to rescue Negro fugitive slaves. He cared little for theology, yet believed in a personal God and immortality, and in all his activities tried to exemplify Christian precepts. As a biographer states, "His sympathies were all modern; he looked constantly forward, and was prevented only by his plain, common sense from accepting every scheme of his generation that wore a hopeful aspect."[222] Professor Commager, who has studied his career more thoroughly than anyone else, calls him "The Universal Reformer," and quotes from his address when installed as minister of the Melodeon: "A Christian Church should be the means of reforming the world, of forming it after the pattern of Christian ideas."[223]

Chapter XI

THE PROTESTANT ADJUSTMENTS TO AMERICAN CHURCH–STATE CONDITIONS AND DEVELOPMENT OF NEW CHURCHES TO MEET NATIONAL NEEDS[1]

In the period immediately after independence, and especially after the adoption of the Constitution, the various churches had to adjust themselves to the new political conditions.[2] The thoughtful people of the time fully realized that the American churches were assuming, as Dr. Edward Livingston stated, "a new complexion." Writing in March, 1788, this leader of the Dutch Reformed Church said: "From being appendages of national churches in Europe, they now become national Churches themselves in this new Empire."[3] It was a time when, freed from political connection with Europe and from the limitations of old colonial bounds, national Churches or denominations were being established as voluntary associations, and were rapidly developing. These had, generally speaking, democratic constitutions giving large powers to the laity, and frequently showed in their form of organization the influence of the American Federal principle. Some churches were of a purely local character, and the state organization created no problem; but others were nation-wide and their missionary work almost world-wide. This latter difficulty was met and has generally continued to be by the incorporation of the controlling denominational organization in the state which provides its national office. The Board of Regents of the state of New York has provided an acceptable agency through which even mission colleges in different parts of the world have been organized.

The property and affairs of these religious bodies came directly under the laws of the states as successors of the colonies, except those bodies in the District of Columbia and in the so-called territories which had not been admitted to statehood and were still under Federal laws. As we study the background and organization of each of the larger and more representative communions we shall be able to understand more clearly their part in the later service to the nation. We shall leave to a subsequent chapter[4] the development in the nineteenth century of their Church–State theories and of their attitude toward social reform.

It is important to study the corporate development of American religious

bodies, always remembering that the regulation of church property, as far as such regulation is permissible under the Constitution, is a state rather than a Federal responsibility. As a great American jurist, Justice Joseph Story (1779–1845), stated over a century ago: "The whole power over the subject of religion is left exclusively to the State governments, to be acted upon according to their justice and the State Constitutions."[5] This was prior to the adoption of the Fourteenth Amendment, but it still holds substantially true, for the Constitution, through the Bill of Rights adopted in 1791, says that "the powers not delegated by the Constitution to the States nor prohibited by it to the States, are reserved to the States respectively, or to the people."[6]

This was highly important, since now for the first time education, which was not so much as mentioned in the original Federal Constitution, and the control of churches, if any was needed, became State matters. Indeed, education—because of preoccupation with political matters, the lack of general interest at the time in public education in many colonies, the desire not to start denominational feeling, and other factors—was only once referred to in all the debates of the Constitutional Convention, and that was when a question was asked as to the power under the new Constitution to establish a national university at the seat of government, and the chair ruled that the Federal government would have such power.[7]

We shall see that the Churches, being placed on an equality before the law and without any financial help from the State, except exemption from taxation of property essential for church purposes,[8] began to thrive as "free churches in a free state." With the final action by Connecticut in 1818 and by Massachusetts in 1833 in severing all connection between the Congregational Churches and the state, the principle of Church-State separation became one of the accepted principles of political philosophy in the United States.[9]

Let us turn now to the leading Protestant bodies and consider their organization or reorganization under the republic, taking them up, as nearly as possible, in the order of their development as self-governing bodies after the Revolution, rather than in that of the establishment of their work in the colonies. This will be followed in later chapters by a consideration of similar steps in the history of the Roman Catholics and of the Jews.[10]

To arrange even the leading Protestant Churches under the republic chronologically is difficult. There are no fixed criteria that are applicable in all cases. Groups like the Methodists and Episcopalians with an episcopal form of organization give the historian of American church origins little trouble. On the other hand, the difficulty of accurate chronological arrangement is great in the case of religious bodies that only gradually emerged from the status of independent

local churches, or of German groups controlled from abroad, into more or less effective national organizations. Sometimes the formation by different independent groups of a single denominational missionary society, or (in the case of the Quakers) the beginning of expansion to the Western frontier, supplies the best clue. Realizing that any selection of the most significant dates is difficult and open to some criticism, we offer the following as a substantially true picture of the order in which the Churches became ready to help effectively in reaching the needs of the new republic.[11] The dates immediately after denominational names give the years of organization or reorganization to meet the new conditions, and the dates in parentheses at the extreme right indicate the years when there was a definite beginning of organized preaching and pastoral work in this part of the world.

1. Methodists, 1784 (1766)
2. Presbyterians, 1786–89 (1683)
3. Episcopalians, 1789 (1607)
4. Universalists, 1790 (1779)
5. German Reformed, 1793 (1709), and the Evangelical Association, 1816 (1800)*
6. Dutch Reformed, 1794 (1628)
7. United Brethren in Christ, 1800 (1785)
8. Congregationalists, 1810 (1620)
9. Friends (Quakers), 1813 (1661)
10. Baptist, including the Church of the Brethren (Dunkers), 1814 (1639)
11. Unitarians, 1819 (1785)
12. Lutherans, 1820 (1638)
13. Disciples of Christ, 1832 (Union of Christians, 1804, and Disciples, 1810)
14. Mennonites, *c.* 1840 (1683)
15. Moravians (*Unitas Fratrum* or United Brethren), 1847 (1735)

Although the non-Protestant communions are dealt with at length in later sections, the corresponding facts regarding their major groups are here given:

Roman Catholics, 1784 (1566)
Jewish congregations 1790 (1682)
Mormons, 1830 (1830)
Eastern Orthodox Churches 1871 (1812)[12]

* These two were united in 1941 in the Evangelical and Reformed Church.

Section 1. THE METHODISTS

Prior to the Revolution there had been no such thing in America as a Wesleyan or Methodist Church. This is clearly shown by two instances.

The first dates from the year 1773. The Reverend Devereux Jarratt (1733–1801) was an Episcopal minister in Virginia who later was a strong factor in aiding Methodist development. He was called upon by one of Wesley's active lay preachers, Robert Williams (*c.* 1745–75), who sought his co-operation. The latter assured Jarratt that the Methodists were "true members of the Church of England"; that "their design was to build up and not divide the church"; that "the preachers did not assume the office of priest"; and that they did not attempt to administer the sacraments, but "were dependent for them upon the parish clergy. . . ."[13] The second incident occurred three years later, in 1776, when the Methodists of Virginia, then something over three thousand in number—about half of all the connection in America—refused to join the Presbyterians and Baptists in the struggle for religious freedom, protesting that though

> they may, in the opinion of some, also come under the denomination of dissenters, they beg leave to declare they are a religious society in communion with the Church of England, and do all in their power to strengthen and support the said church.

They, therefore, prayed that the Church of England "may still continue to be the established church."[14] The Methodists represented "class meetings" or prayer and evangelistic groups drawn from many quarters but nominally related to the Episcopal Church. They formed "united societies" of a religious rather than an ecclesiastical character in the old settled communities, and in frontier regions associated worshipers under itinerant preachers.

Their beginnings in what is now the United States go back to 1766 when Philip Embury (1728–73), a Wesleyan "local preacher" from Ireland, began to preach in New York City and formed a society now known as the John Street Church, generally considered the first organized Methodist congregation in the country. In 1769 John Wesley (1703–91) sent over two itinerant preachers, and in 1771 two others, including Francis Asbury (1745–1815).[15]

All the early English Methodist preachers who came to this country were probably laymen except Asbury, who had been ordained in the Anglican Church; Strawbridge is considered the only other possible exception. This is why a question was raised as to the administration of the sacraments, and it explains why the Methodists were generally considered as under the jurisdiction of the Episcopal Church. This condition continued until Coke, Whatcoat, and

Vasey arrived in 1784. At the Christmas Conference in that year, which organized the Methodist Church and was attended by about sixty preachers, Dr. Coke was the only ordained minister. It is also interesting to note that there were present no laymen in the ordinary sense of the word.[16]

John Wesley's political conservatism constituted a difficulty for patriotic Methodists to overcome in the early days of the movement in this country. His *Calm Address to the American Colonists,* issued in 1777, was not calculated to make him and his followers popular in America. Many of their ministers suffered persecution for taking the British side, but it was understandable in view of Wesley's attitude and of the fact that they had not at the time any independent American organization. They did not even have a yearly conference for colonial Methodists until 1773, and it was not until a decade later that foundations were laid for an effective organization of American Methodism.

The first result of the treaty of peace of 1783, as far as a new religious organization was concerned, was the establishment of the Methodist Episcopal Church in America. Up to the date of this foundation, 1784, American Methodism was a part of the "Wesleyan Connection," partly Church of England and partly somewhat separate. This earnest group had gone largely on its own way under its preachers, duly recognizing "the authority" of John Wesley. As Jesse Lee, writing in 1810, stated of the colonial period: "We were only a religious society, and not a church; and any member of any church, who would conform to our rules and meet in a class, had liberty to continue in their own church."[17]

The conference to consider the organization of American Methodism, known as the Christmas Conference, was held in Baltimore late in December, 1784, when the denomination numbered 83 preachers and nearly 15,000 members. At that time the Reverend Dr. Thomas Coke (1747–1814), a Church of England presbyter, and "Mr." Francis Asbury, the hero of American Methodism, were "Joint Superintendents" by appointment of John Wesley for North America. Wesley had written them under date of September 10 of that year to advise the use of his revision of the Church of England service on Sundays, but telling them that

> As our American brethren are now totally disengaged, both from the State and the English hierarchy, we dare not entangle them again either with the one or the other. They are now at full liberty simply to follow the Scriptures and the Primitive Churches, and we judge it best that they should stand fast in that liberty wherewith God has so strangely made them free.[18]

The word "strangely" strikes our attention. It was probably used because John Wesley had earlier opposed independence.

The most important questions and answers of the 1784 conference, from our standpoint, were the following:

Ques. 2. What can be done in order to the future union of the Methodists?

Ans. During the life of the Rev. Mr. Wesley, we acknowledge ourselves his sons in the gospel, ready in matters belonging to church government to obey his commands. And we do engage, after his death, to do everything that we judge consistent with the cause of religion in America and the political interests of these States to preserve and promote our union with the Methodists in Europe.

Ques. 3. As the ecclesiastical as well as civil affairs of these United States have passed through a very considerable change by the Revolution, what plan of church government shall we hereafter pursue?

Ans. We will form ourselves into an Episcopal Church, under the direction of superintendents, elders, deacons, and helpers, according to the forms of ordination annexed to our liturgy and the Form of Discipline set forth in these minutes.[19]

After accepting Wesley's reduction of the Thirty Nine Articles of the Church of England to twenty-four, this was added concerning the rulers of the United States:

The President, the Congress, the General Assemblies, the Governors, and the Councils of State. *as the Delegates of the People,* are the Rulers of the United States of America, according to the division of power made to them by the Constitution of the United States, and by the Constitutions of their respective States. And the said States are a sovereign and independent Nation, and ought not to be subject to any foreign jurisdiction.[20]

A prayer was also adopted for the "Supreme Rulers of the United States."[21]

This pronouncement was important since in the early days of the Revolution the Methodists, because of their Anglican connection and for other reasons, were inclined to be loyal to the British government, and John Wesley had written in 1775 his much-criticized address counselling submission to the king.[22]

The same conference (1784) took a further and highly important step by electing Mr. Asbury to the episcopal office (originally called superintendent) conjointly with Dr. Coke, "by whom, with the assistance of several Presbyters, he was consecrated a Bishop,"[23] thus giving the Methodists the honor of being the first Church with the episcopal form of government to attain an independent status in the United States.

The new Church was loyal to the republic from its earliest days. This emphasis appears in the letter signed by Coke and Asbury and transmitted by the Methodists to President Washington under date of May 29, 1789. They referred to their confidence in him, "for the preservation of those civil and

religious liberties which have been transmitted to us by the providence of God and the glorious Revolution . . . ," and prayed that he might be enabled to advance "the happiness and prosperity of the United States."[24]

In this same year (1789) the organization now known as the Methodist Book Concern was founded. It was destined to exert a powerful influence on the home missionary work of the Church, especially in the Christianizing of the Western frontier. Through this society, following the organization of the Methodist Episcopal Church in America under its own bishops five years earlier, the Methodists secured an independent administration without breaking entirely their bond with the honored English founder of their denomination.

In 1791 there was sympathetic correspondence between Dr. Coke and Bishop William White (1748–1836) of the Episcopal Church for union of their two Churches, and in 1792 at the General Convention of the Episcopal Church such a plan passed the House of Bishops but failed in the House of Clerical and Lay Delegates.[25] In the same year the first of the general conferences was held. This was the highest authority in the Church. It became from now on a regular quadrennial event and did much to encourage unity, *esprit de corps*, and missionary zeal. This zeal became one of the marked characteristics of the denomination, whose preaching of free grace and personal responsibility was so effective in Christianizing the frontier, as we have seen in an earlier section.[26]

Of later developments in American Methodism there is need here of indicating only a few important points.

The Methodist Protestant Church was established in 1830. Its principal departures were in doing away with episcopacy and admitting lay representation in the conferences of the Church.[27]

The separation of the Methodist churches over slavery will be dealt with at length later.[28] It is not considered so much a secession of the Southern churches from the parent Church, nor as their expulsion, but as "a bisection of the Church along territorial lines."[29] The reunion of the two bodies and of the Methodist Protestant Church was consummated in 1939.[30]

Section 2. THE PRESBYTERIANS

Most of the early Presbyterians in the American colonies were of Scotch or Scotch-Irish descent. They came especially from Ulster in the decade after the woolen industry there was destroyed by an act of 1699—which prevented exportation to any country except England and limited even this—and other factors which interfered with their prosperity. They were also opposed to being assessed for the support of the Episcopal Church; and so for economic and religious reasons many decided to emigrate. In 1718 the first considerable body,

consisting of from six to eight hundred, arrived in Boston. They scattered broadly, so that by the end of the colonial period there were some five hundred distinct Scotch and Scotch-Irish communities in the American colonies.[31] They were immigrants of sturdy character; no stronger, more promising group has ever come to our shores. They played an important part in the movement for national unity and independence, and influenced the form of our republican government.[32]

As "dissenters" in Virginia and some other states, Presbyterians were in the forefront of the battle for religious freedom, being specially concerned to prevent an Episcopal establishment. Samuel Davies (1723–61),[33] the founder of the Hanover Presbytery, was the leader of the group of ministers, mostly Presbyterian and Baptist, who helped to stimulate Jefferson, Madison, and others to secure religious liberty, and ultimately the overthrow of the established Anglican Church in Virginia. It is, therefore, important to know something about the early organization and work of the Presbyterian Church in the United States.

It was always interested both in education and evangelism, and laid great emphasis on a well-trained ministry. Important factors in early American Presbyterianism were the "log colleges," especially the one founded by the Reverend William Tennent at Neshaminy, twenty miles north of Philadelphia. Here in twenty years (1726–46) he trained many of the coming leaders of the American Church and of the movement for Constitutional democracy, and provided the background out of which the College of New Jersey (now Princeton University), opened in 1746, was developed.

The members of the Church played a notable part in the Revolution. Dr. Charles Inglis (1734–1816), the Tory rector of Trinity Church, New York, wrote in 1776:

> I do not know one Presbyterian minister, nor have I been able, after strict inquiry, to hear of any, who did not, by preaching and every effort in their power promote all the measures of the Continental Congress however extravagant.[34]

The names of the Reverend John Witherspoon (1723–94),[35] president of Princeton College and a prominent member of the Continental Congress, the Reverend George Duffield (1732–90), one of the two chaplains of the Congress, and many others, establish the record of Presbyterian ministers for loyalty to the colonial cause.

Humphrey is of the opinion that the Synod of New York and Philadelphia of the Presbyterian Church was the most influential of all colonial institutions in the development of a centralized national conscience. It developed the method by which, through a republican form of organization, the collective wisdom

of the entire Church, both lay and clerical, could be focused on church affairs,[36] and doubtless had some influence on the American form of government.

The Church also played a highly important part in meeting the religious needs of the Scotch-Irish population which settled in western Pennsylvania and the adjoining Appalachian regions immediately after the war. The Presbytery of Redstone (Pennsylvania), formed in 1781 by the united action of the presbyteries of New York and Philadelphia, did yeoman service. But a national feeling was in the air, and a delegated General Assembly of the Presbyterian Church in the United States of America was provided for by the Synod of 1786. The Church was subdivided into synods, and these in turn into presbyteries.[37] The synod ordered the preparation of "a book of discipline and government . . . accommodated to the state of the Presbyterian Church in America."[38] The Church had an inherited tradition of self-government with a federal ecclesiastical system of its own, and was accustomed to look on its General Synod as its servant rather than its master. The first meeting of the new General Assembly was appropriately held in Philadelphia in 1789.

The Presbyterian Church quite naturally, therefore, took the lead among the previously existing Churches in adjusting its constitution to the needs of the new government. It found, for instance, that changes in the Westminster Catechism would have to be made to eliminate the principle of State-Churchism, and to proclaim the doctrine of religious liberty and of the legal equality of all Christian denominations. The most important change was that made in Chapter XXIII regarding civil magistrates. Dr. Schaff has shown this clearly by the use of parallel columns:

Original Text, 1647.

Ch. XXIII. 3.—Of the Civil Magistrate.

The civil magistrate may not assume to himself the administration of the Word and Sacraments, or the power of the keys of the Kingdom of heaven; yet he hath authority, and it is his duty to take order, that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered, and observed. For the better effecting whereof he hath power to call synods, to be present at them, and to provide that whatsoever is transacted in them be according to the mind of God.

American Text, 1788.

Ch. XXIII. 3.—Of the Civil Magistrate.

Civil Magistrates may not assume to themselves the administration of the Word and Sacraments, or the power of the keys of the kingdom of heaven; or, in the least, interfere in matters of faith. Yet, as nursing fathers, it is the duty of civil magistrates to protect the Church of our common Lord, without giving the preference to any denom-

ination of Christians above the rest, in such a manner that all ecclesiastical persons whatever shall enjoy the full, free, and unquestioned liberty of discharging every part of their sacred functions without violence or danger. And, as Jesus Christ hath appointed a regular government and discipline in his Church, no law of any commonwealth should interfere with, let, or hinder the due exercise thereof, among the voluntary members of any denomination of Christians, according to their own profession and belief. It is the duty of civil magistrates to protect the person and good name of all their people, in such an effectual manner as that no person be suffered, either upon pretence of religion or infidelity, to offer any indignity, violence, abuse, or injury to any other person whatsoever; and to take order that all religious and ecclesiastical assemblies be held without molestation or disturbance.[39]

The old Section XX "Of Christian Liberty, and Liberty of Conscience" of the Westminster Confession was left in the American revision. The essential part reads:

God alone is Lord of the conscience and hath left it free from the doctrines and commandments of men which are in any thing contrary to his word, or beside it, in matters of faith or worship. So that to believe such doctrines, or to obey such commandments out of conscience, is to betray true liberty of conscience; and the requiring an implicit faith, and an absolute and blind obedience, is to destroy liberty of conscience, and reason also.[40]

The closing clause of this chapter, formerly reading "they may lawfully be called to account, and proceeded against by the censures of the Church and by the power of the Civil Magistrate," was however modified by the omission of the last eight words to show that the State had no power to control the Church and the internal affairs of its members.

Furthermore, the American edition of the Westminster *Larger Catechism,* in its answer to question 109, deleted "tolerating a false religion" as a sin forbidden in the second commandment, in Christ's summary of the law,[41] a significant change in the interest of tolerance.

The Presbyterian Church as thus constituted in this country was not, however, long to remain united. Schisms and divisions appeared, especially due to the very conservative groups, such as the "Old School," some of which secured control of the General Assembly in 1837, wishing to have their own denominational agencies instead of continuing to support an undenominational movement such as the American Board. It read out the "New School" group, which represented nearly half of its ministry and membership. This division lasted until 1870; and in the meantime the Presbyterians had been further split, North and South, over slavery.

In addition to various other groups still bearing the Presbyterian name, especially the Cumberland Presbyterians, organized in 1810 as an independent

Church, there also split away from the parent stock in western Pennsylvania and Kentucky two vigorous and closely related groups laying supreme emphasis on the Bible, and closer than the parent body to the democratic life of the frontier.

The "Declaration and Address" adopted by the Christian Association of Washington, Pennsylvania, in 1809, under the influence of Thomas Campbell (1763–1854), a Presbyterian, was perhaps the most important document in the history of the "Disciples." He wished to get people to unite on the Scriptures alone rather than on creeds or other dogmatic standards. He did not wish to form a new sect, but to encourage unity among Christians of different denominations. In 1810 he applied to the Presbyterian (Regular) Synod of Pittsburg to be taken into that body with his association. When this was refused, the Christian Association organized, May 4, 1811, into the Brush Run Church, of which Thomas Campbell was named elder and his son Alexander (1788–1866) the licensed preacher. After joining with another group of Presbyterian seceders known as "Christians," who also practiced immersion and had some connection with the Baptists, the two groups—the "Disciples" and the "Christians"—united in 1832. The resulting Church[42] has had a large influence in the Middle West. It has no authoritative philosophical Church-State theory, but has a strong independent and democratic congregational tradition.

Such were the beginnings of organized American Presbyterianism after independence. It represented a sturdy group of citizenship with a Calvinist background and profound belief in the Christian religion and its Bible as of fundamental importance for the developing nation, to whose effective evangelization and religious education it stood ready to consecrate all its power.

Closely related to the Presbyterians were the French Huguenots. They were not relatively numerous in America, but were among the most public-spirited and tolerant of our early settlers. We find them settling New Amsterdam (New York) in 1623. They were largely French-speaking Walloons. There were also small groups in other parts of the province of New York and elsewhere; but it was not until the Revocation of the Edict of Nantes under Louis XIV, in 1685, that the immigration of the Huguenots was very extensive. In that year large numbers came to Rhode Island, to places on Long Island Sound, to Delaware, Maryland, Pennsylvania, and especially South Carolina. Here, indeed, they were found as early as 1670, and played a part in the settlement of Charleston in 1680. By 1687 they had established four communities in the colony which were largely or wholly French. It was in the state of South Carolina more than any other that the Huguenots preserved their identity, retaining to this day, in Charleston, the only separate Huguenot church in America. In many cases they mingled with the Presbyterians, as their government was the same and their

theology was Calvinistic, although they inclined to be more tolerant. It is not without significance that President Washington's earliest American ancestor was a Huguenot. These people had suffered persecution themselves, and some of them were determined to do all in their power to develop religious freedom in America.

Section 3. THE EPISCOPALIANS

The Episcopal Church was more affected by the American Revolution than almost any other, partly because it gained its independence from the English Church, though remaining in communion with it, and partly because in the Northern states it lost so many strong leaders who sympathized with the British government and consequently fled to loyal British colonies, especially Nova Scotia or other parts of Canada.

During most of the colonial period there had been almost everywhere, except in parts of the South and a few large seaboard towns, strong opposition in the colonies to the Episcopal Church. In New England and some other parts of the country it was thought to be an intruder, and its liturgy, ceremonies, and traditions inconsistent with the ideals of the Reformation, with which the overwhelming body of settlers sympathized. Outside of New England the Anglican Church generally had either the support or the sympathy of governors and higher officials sent over from England, but this made it increasingly unpopular among the rank and file of people as the Revolution approached. During the entire colonial period it was without bishops, in spite of earnest petitions that they be appointed. These did not succeed, largely because of non-Episcopal American opposition.[13] Presbyterians, Congregationalists, and Baptists all feared that bishops would mean a State-Church with tithes and other distasteful features. They also realized that English bishops, being sworn supporters of the crown, would be unlikely to take the side of the colonies in political issues. Consequently, Episcopalianism was not self-propagating in America, since no one could be confirmed and no minister could be ordained here. The result was that such Americans as became clergymen had to go to England for ordination, and the right of confirmation was practically disregarded—all sincere, baptized Christians of mature years being admitted to the communion. The Bishop of London had general authority over Anglican clergy in the American colonies after October 1, 1635, when an order in council was issued placing all such clergy under his jurisdiction. This became increasingly unsatisfactory to the clergy, who wanted a diocesan nearer at hand, and it led to the demand for American bishops.

The Church had been very strong in Virginia and other Southern colonies,

where it had been established by law. It was fairly strong in and near the great cities elsewhere, such as New York—where it was also legally established in New York, Westchester, Queens, and Richmond counties—and in Philadelphia, but very weak in the rural parts of New England outside of southern Connecticut. It owed its life mainly to the Society for the Propagating of the Gospel in Foreign Parts (the S.P.G.), dating from 1701. The person to whom we are indebted for the major influence that resulted in the founding of this society, as well as the Society for the Promotion of Christian Knowledge, was the Reverend Thomas Bray (1656–1730), commissary of Maryland, where the Church of England had been established in 1692 and was strong. He was a man of character, ability, and force. At the time of the founding of these two societies, there were only about fifty clergy of the Church of England in the North American colonies, the great majority of them in Virginia and Maryland.

By the time of the Revolution there were about two hundred and fifty ministers and three hundred churches, largely due to the efforts of the S.P.G.[44] Their situation became particularly difficult from the standpoint of Church–State relations. They were connected with the Established Church in England and by their oath of allegiance had bound themselves to the crown. Consequently, they felt that they must continue their prayers for the king and the royal family. This issue became acute, especially in New England. For instance, the General Court of Massachusetts passed an act in March, 1777, that forbade expressions in preaching or praying which might discountenance popular support of colonial independence, and provided for a fine of fifty pounds for disregard of the act.[45] Similar acts were passed in some of the other colonies.

Another difficulty was due to the fact that most of the Episcopal clergy received part of their stipends from the Society for the Propagation of the Gospel, and these subsidies were not continued to clergy who were considered disloyal. As a result, many Episcopal churches were closed for much of the Revolutionary period, including what was in many ways the most important church of the Anglican communion in New England, namely, King's Chapel. Here the conventions of the Episcopal clergy had been regularly held for many years until the war, with the provincial governors, as well as many crown officials, attending. It was a handsome stone edifice which stood as "a majestic symbol of the relation between church and state."[46]

When Boston was occupied by the British army and navy, officers and men were frequently present at its services, but when the British left Boston in March, 1776, the church was closed, and opened only once or twice again during the war. The only Boston Episcopal church which seems to have remained open with regular services throughout the Revolution was Trinity, whose respected curate, the Reverend Samuel Parker (1744–1804), adapted himself to the chang-

ing political order, believing that it was his duty to care for the souls of faithful worshipers irrespective of political allegiance. He conformed to the request of the vestry, which passed a resolution to the effect that "Mr. Parker the present minister be desired to continue officiating in said church and that he be requested to omit that part of the liturgy of the church which relates to the King."[47] He was later chosen the second Bishop of Massachusetts.

There were other matters besides the question of prayers which created difficulties. For instance, should the Episcopal minister keep the fast days and observe the thanksgiving days appointed by Congress? Was he willing to read the Declaration of Independence or take up a collection for clothing for the rebel soldiers? Such questions were raised in many places. An instance was that of the Reverend Edward Bass (1726–1803), a rather mild Tory who was rector at Newburyport, Massachusetts. The Society for the Propagation of the Gospel withdrew its financial aid and dismissed him for disloyalty in 1779, charged with keeping the fasts and feasts appointed by Congress, reading the Declaration of Independence, and so on.[48] Some Anglican churches were "defiled" by having the royal arms removed, and being turned into stables, or used for other secular purposes.

The situation in Connecticut was particularly interesting, as the Church was relatively strong there, with twenty clergymen serving over forty churches, mostly in the southern part of the state. The clergy contained more American-born ministers than in Massachusetts. They held a convention July 23, 1776, and it was agreed that it would be wise, to save the Church from ruin, to suspend the public exercise of ecclesiastical functions; but in spite of this many missionaries suffered from the ardor of patriotic zealots.[49] One clergyman who did not wish to mutilate the liturgy got around the difficulty by merely reading passages from the Old and New Testaments, the Psalms, and the homilies in the morning, and teaching the catechism in the afternoon. In New Haven, the rector, the Reverend Bela Hubbard (1739–1812), a moderate loyalist, closed his church for a while in accord with the 1776 agreement with the clergy, but reopened it in 1778, even praying for "Congress and the free and independent states of America."[50] He was treated with respect; but in other cases clergymen who showed any signs of attachment to the cause of independence were assaulted by the Sons of Liberty, put in jail, waylaid and beaten, had overripe vegetables thrown at them, and suffered other indignities. The Reverend Samuel Seabury (1729–96), afterward the first Bishop of Connecticut, was among the loyalists who were badly treated. He was seized by the Sons of Liberty, taken under guard to New Haven, paraded in triumph through the streets, and kept for a month incommunicado. He was afterward a chaplain of Fanning's Loyal American Regiment.

In at least one case, that of a missionary at Newtown and Reading, the church was kept open throughout the war, the rector affirming that he "would pray and preach for the King until the rebels cut out his tongue."[51] Tiffany states that for a time all Episcopal churches in the colony except those under this clergyman were closed.[52] Another loyalist who opened his church but showed good sense in his deportment was the rector of Norwich. He omitted prayers for the king and royal family, concluding, as he himself stated, "that the cause of religion ought not to be annihilated on a civil account."[53]

Such are a few of the examples of the difficulties experienced by the English State-Church in New England in the period when the colonies were breaking away from Great Britain.

Political independence separated these churches from the English Episcopate and from the supervision of the Bishop of London. At the same time the financial support afforded by the Society for the Propagation of the Gospel ceased, and the disestablishment of the Church in the Southern states put them in a difficult financial situation, as they lost in some cases much of their revenue and property. Then, too, the independent establishment of the Methodists reduced their ranks, as did also the flight of the Tories, especially in New York and New England. This migration to Nova Scotia and other British-American colonies began with the evacuation from Boston in 1776 and reached its climax in 1783 when independence was assured. Tens of thousands of British sympathizers—most of them affiliated with the Church of England—left the United States. This weakened a Church which was already none too popular in most parts of the country. The Tories who remained had to swear loyalty to the new State by signing a formal test-act document. They were obliged to swear allegiance before "the everlasting God" and agree to give no aid to Britain. So the Episcopal Church entered the regime of independence depleted by emigration, and with many of its remaining members ill-affected toward the new regime and for a time denied the vote.[54]

The position of the Church was more difficult than ever, for it was not until the passing of the Enabling Act of August 13, 1784, that men could be ordained for service in America without taking the oath of allegiance to the British crown. This was of course impossible for Americans, and at the same time the supply of clergymen from England entirely ceased.

A prime necessity to strengthen the Church and to fit it for growth in the new nation, was to secure American bishops. Connecticut took the lead. Samuel Seabury (1729-96), who had been selected by its clergy, was consecrated in Aberdeen by nonjuring bishops in 1784. He had been unable to secure consecration in England because the established Anglican Church did not feel that it could consecrate bishops outside of England in an independent State where

prayers for the president were being substituted for prayers for the king, and where bishops could not swear allegiance to the crown. To Seabury's persistency and resourcefulness belongs the credit of overcoming all obstacles and domesticating the Anglican episcopate in America; but it was the Reverend William White (1748–1836), the rector of Christ Church, Philadelphia, and first Bishop of Pennsylvania (1786), who did more than any one else to make the Church part and parcel of American life. Seabury had not been sympathetic with the cause of the American Revolution, whereas White, who had been chaplain of the Continental Congress, was an ardent patriot. He was mainly responsible for arranging for the General Convention of 1789, which organized the Protestant Episcopal Church in the United States.

This result became possible because the petition addressed to the English episcopate in 1785, asking that its members consecrate bishops elected by conventions in different American states, had resulted in an act of Parliament authorizing the consecration of three American bishops. Bishop White of Pennsylvania and Bishop Provoost of New York were consecrated in London in 1787, and Bishop Madison of Virginia in 1790; these united with Bishop Seabury in establishing the succession of American bishops. Prior to this, the members of the Episcopal Church in several of the states considered it necessary to secure certificates from state authorities of the legitimacy under a republican constitution of their form of government. It was thought that such certificates would meet objections to securing the desired consecration of bishops in England. Indeed, the authorities of the Church of England had suggested to the representatives of the American Episcopal Church the importance of such certification. As a result certificates were secured from Pennsylvania, New York, and Virginia. The New York certificate, signed by Governor Clinton December 27, 1785, may be considered as characteristic:

"To All to Whom these Presents Shall Come or May Concern.

It is certified and made known that by the constitution of the said state, it is ordained and declared that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed within this state to all mankind, and that there is nothing in the said constitution, or in any of the laws of the said state, to prohibit the clergy and others of the Episcopal Churches or of any other church in the said state, to take such measures as they shall judge proper, for keeping up a succession of religious teachers, Provided, that the means they may adopt for this purpose be not inconsistent with the peace or safety of the state and do not induce a subjection or allegiance to any foreign jurisdiction or power, civil or ecclesiastical whatever."[55]

Some idea of the difficulties involved in securing American bishops to hand down the historic orders of the Church and to supervise its affairs may be seen

from a letter written by Benjamin Franklin (1706–90), then our Minister to France, to the Bishop of Sodar and Man, at the time the controversy was at its height:

Passy, 5 July, 1785.

MY LORD,

I received the too complaisant letter your Lordship did me the honor of writing to me by the Reverend Mr. Christian, who has also communicated some of your views for the benefit of religion in the United States of America, requesting my opinion, which I have given him, but will repeat in this letter, lest I should not in every particular have been rightly apprehended.

It is proper to be understood, that those States consist of thirteen distinct and separate sovereignties, each governed by its own laws, in which no one religious sect is established as predominant, but there is a general toleration of all; and, should any thing be enacted by one of them in favor of a particular sect, it would have no operation in the others. The Congress, though formed by delegates from each State chosen annually, has powers extending only to those general affairs of political government, that relate to the whole, but no authority whatever is given to them in ecclesiastical matters. And I therefore think, they will do nothing, either to encourage or discourage the introduction of a bishop in America. For myself, I can only say as a private person, that I think such an officer may be of use to the Episcopalians, not only for the better government of their clergy, but for preventing the expense and risk that attend the sending of their young men to England for ordination. He should, however, have power to consecrate other bishops, so as to prevent for ever the necessity of sending to England for successors in that station, otherwise he will hardly be so well received.

The great difficulty will be to make proper provision for his support. I doubt whether any of the governments will establish such support, and I have not much confidence, that any thing considerable may be obtained by private contributions. My reasons are, that the Episcopalians in most of the States are very small in number, compared with the inhabitants of other persuasions; and, where they are a majority, they do not generally see the necessity or utility of a resident bishop, and they apprehend some inconvenience in it. Of this there was a strong instance in Virginia, some years before the late Revolution. The inhabitants of that Province were almost wholly of the Church of England, and their House of Commons of course the same. Yet that House unanimously censured, in strong terms, the proposition of some of their own clergy for introducing a bishop, and thanked others who opposed and defeated the project, as may be seen in the following extract from their Journal.

"Friday, July 12th, 1772. Resolved, *nemine contra-dicente,* that the thanks of this House be given to the Reverend Mr. Henley, the Reverend Mr. Gwatkin, the Reverend Mr. Hewit, and the Reverend Mr. Bland, for the wise and well-timed opposition they have made to the *pernicious project* of a few mistaken clergymen for introducing an American bishop; a measure by which much disturbance, great

anxiety and apprehension, would certainly take place among his Majesty's faithful American subjects, and that Mr. Richard Henry Lee and Mr. Bland do acquaint them therewith."

The apprehension mentioned in the Resolve, I imagine must have been an apprehension of expense to maintain a bishop suitable to his dignity, and of attempts to oblige the laity to defray such expense by taxes or tythes, or at least of their being solicited for voluntary contributions, there being at present no fund appointed for such purpose, nor any thing hitherto given but a farm, by legacy, in Rhode Island. If, however, the laity should have changed their minds, and wish now to have a bishop, whom they would engage to support by voluntary contributions, in that case, I imagine, none of the governments would forbid it, but the support would probably be too small and too precarious to be a sufficient encouragement. . . .[56]

But these difficulties were being overcome. Indeed, Seabury had been consecrated the year before Franklin wrote this letter.

It was evident that the various Episcopal churches in the former colonies must now unite on some form of organization independent of control from England and yet maintain the historic episcopate. Some groundwork had already been accomplished. The first important step toward this end dates back to 1782, when the Reverend William White already referred to published anonymously his pamphlet *The Case of the Episcopal Churches in the United States.* This urged union and outlined a plan. The author pointed out that all former jurisdiction over the churches had been withdrawn by the war, and that something needed to be done to prevent the dissolution of the parishes which remained and to set about their strengthening. The general features of his plan, except for the provisional substitute for a bishop, formed the basis of the constitution of the Church adopted in 1789.[57] The general purpose was to embody the essential elements of the Church of England in an organization "which should imbibe and express the national spirit,"[58] and be sufficiently effective so that the American Church could apply for the episcopate.

In 1784 a highly important conference was held in Dr. White's parish, Christ Church, Philadelphia, attended by four clergymen and twenty-one laymen appointed by the church wardens and vestries of different parishes. It was the first time that the laity had sat officially in the councils of the Church. This important resolution was adopted:

That it is expedient to appoint a standing committee of the Episcopal Church in this State, consisting of clergy and laity; that the said committee be empowered to correspond and confer with representatives of the Episcopal Church in the other States or any of them, and assist in framing an ecclesiastical government; that a constitution of ecclesiastical government, when framed, be reported to the several congregations, to be binding on all the congregations consenting to it, as soon as a majority

of the congregations shall have consented; and that the committee be bound by the following instructions or fundamental principles:

First, That the Episcopal Church in these States is, and ought to be, independent of all foreign authority, ecclesiastical or civil.

Second, That it ought to have, in common with all other religious societies, full and exclusive powers to regulate the concerns of its own communion.

Third, That the doctrines of the gospel be maintained as now professed by the Church of England; and uniformity of worship continued, as near as may be, to the liturgy of said church.

Fourth, That the succession of the ministry be agreeable to the usage which requireth the three orders of bishops, priests, and deacons; that the rights and powers of the same, respectively, be ascertained; and that they be exercised according to reasonable laws, to be duly made.

Fifth, That to make canons or laws there be no other authority than that of a representative body of the clergy and laity conjointly.

Sixth, That no powers be delegated to a general ecclesiastical government, except such as cannot conveniently be exercised by the clergy and laity in their respective congregations.[59]

Dr. White was appointed chairman of the standing committee, which arranged for the first regular meeting of the General Convention, held in Philadelphia in 1785. This convention decided on certain changes in the *Book of Common Prayer* and in the Articles of Religion, to be incorporated in the provisional liturgy known as the "Proposed Book" of 1786. These included, among other provisions, the setting apart of the Fourth of July as a solemn day "of prayer and thanksgiving to Almighty God" to be "commemorative of the blessings of civil and religious liberty in the land wherein we live . . . ,"[60] and the providing of a suitable special service for it. The same revision omitted in the litany the petitions for the king and royal family, and substituted

That it may please thee to endue the Congress of the United States, and all others in authority, legislative, executive and judicial, with grace, wisdom and understanding, to execute justice and maintain truth.[61]

Although the "Proposed Book" was not satisfactory to the Church of England as a basis on which to grant consecration for American bishops, and consequently was not finally adopted, it is a historic landmark that shows the attitude of the Episcopal Church toward the State at the time, and that provided the foundation for the changes later authorized.

The important General Convention of 1789 adopted canons which, with relatively few modifications, have continued to this time. It also adopted an instrument entitled: "Alterations of the Liturgy of the Protestant Episcopal Church in the United States of America, in order to render the same conform-

able to the American Revolution and the Constitutions of the respective States."[62] This contained the "Prayer for the President of the United States and All in Civil Authority" virtually in the form used in the "Proposed Book."

The preface of the *Book of Common Prayer* still contains this admirable statement regarding the changes adopted at this first convention of the Episcopal Church in the United States:

But when in the course of Divine Providence, these American States became independent with respect to civil government, their ecclesiastical independence was necessarily included; and the different religious denominations of Christians in these States were left at full and equal liberty to model and organize their respective Churches, and forms of worship, and discipline, in such manner as they might judge most convenient for their future prosperity; consistently with the constitution and laws of their country.

The attention of this Church was in the first place drawn to those alterations in the Liturgy which became necessary in the prayers for our Civil Rulers, in consequence of the Revolution. And the principal care herein was to make them conformable to what ought to be the proper end of all such prayers, namely, that "Rulers may have grace, wisdom, and understanding to execute justice, and to maintain truth"; and that the people "may lead quiet and peaceable lives, in all godliness and honesty."

But while these alterations were in review before the Convention, they could not but, with gratitude to God, embrace the happy occasion which was offered to them (uninfluenced and unrestrained by any worldly authority whatsoever) to take a further review of the Public Service, and to establish such other alterations and amendments therein as might be deemed expedient.

The Thirty Nine Articles of Religion from the English *Prayer Book* were not finally revised until 1801, when certain important changes were made. For example, the old statement about the throne was omitted:

The Queen's [King's] Majesty hath the chief power in this realm of England and other of her [his] dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and it is not, nor ought to be, subject to any foreign jurisdiction.[63]

In place of this the following was substituted:

The power of the civil magistrate extendeth to all men, as well clergy as laity, in all things temporal; but hath no authority in things purely spiritual. And we hold it to be the duty of all men who are professors of the gospel, to pay respectful obedience to the civil authority, regularly and legitimately constituted.[64]

This article is still in force, and represents the attitude of the Church and its membership.

The Episcopal Church was now well organized and implemented on a na-

tional scale for its work in the new republic. It was entirely self-governing, having broken all administrative ties with England, though continuing in regular communion with all branches of the Anglican Church. It was in a position to carry on as a missionary body and to make all further adjustments in the various states that might seem advisable or necessary.

But the American Episcopal Church long showed the effects of the struggles through which it had passed, and the need of adjustment to the democratic influences in the new republic. For example, it took a long time for the bishops in most dioceses to gain effective authority; they were granted very limited powers. The Maryland convention of 1784 had declared:

> According to what we conceive to be of true Apostolic Institution, the duty and office of a bishop differs in nothing from that of other priests, except in the powers of ordination and confirmation, and the right of presidency in ecclesiastical meetings or synods.[65]

In many cases the bishop was required to act only with the approval of the diocesan convention or its permanent representative, the "Standing Committee" of clergy and laity—a new institution in Anglican Church tradition. Furthermore, in all the early dioceses the bishop was subject to trial by his own convention of clergy and laity, though in most cases it was required that a member of the Episcopal order should preside and pass sentence.[66]

In these early days while the work of the Church was getting under way on a national scale there was much semi-independent action in the various recently established states.

For our purposes perhaps the case most interesting and least generally known was that of Maryland, where the clergy of the diocese, meeting in 1783, adopted "A Declaration of Certain Fundamental Rights and Liberties of the Protestant Episcopal Church in Maryland." This was duly recognized and confirmed at a formal meeting of the clergy and lay delegates in 1790. The plan is so illuminating as representing the ideals and problems of Church-State relations at the time the American government was being formed, that, though not used in other states, it is here reproduced in full.

A Declaration of Certain Fundamental Rights and Liberties
of the Protestant Episcopal Church of Maryland

WHEREAS, by the Constitution and Form of Government of this State, "All persons, professing the Christian Religion, are equally entitled to protection in their religious liberty, and no person, by any law (or otherwise), ought to be molested in his person, or estate, on account of his religious persuasion or profession, or for his religious practice; unless, under color of religion, any man shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights:" And *whereas,* the ecclesiastical and spiritual

independence of the different religious Denominations, Societies, Congregations and Churches of Christians in this State, necessarily follows from, or is included in, their civil independence:

Wherefore, we the Clergy of the Protestant Episcopal Church of Maryland (heretofore denominated the Church of England, as by law established), with all duty to the civil authority of the State, and with all love and good will to our fellow Christians of every other religious denomination, do hereby *declare, make known* and *claim* the following, as certain of the *fundamental Rights and Liberties* inherent in, and belonging to, the said Episcopal Church, not only of common right, but agreeably to the express words, spirit and design, of the Constitution and Form of Government aforesaid, viz.:

I. We consider it as the undoubted right of the said Protestant Episcopal Church, in common with other Christian Churches under the American Revolution, to complete and preserve herself as an entire Church, agreeably to her ancient usages and profession, and to have the full enjoyment and free exercise of those purely spiritual powers, which are essential to the being of every Church or Congregation of the faithful, and which, being derived only from CHRIST and His Apostles, are to be maintained, independent of every foreign, or other, jurisdiction, so far as may be consistent with the civil rights of society.

II. That ever since the Reformation, it hath been the received doctrine of the Church whereof we are members (and which, by the Constitution of this State, is entitled to the perpetual enjoyment of certain property and rights under the denomination of the CHURCH OF ENGLAND), "That there be these three orders of Ministers in CHRIST'S Church; Bishops, Priests, and Deacons," and that an Episcopal Ordination and Commission are necessary, to the valid administration of the Sacraments, and the due exercise of the Ministerial Functions, in the said Church.

III. That, without calling in question the Rights, Modes, and Forms, of any other Christian Churches or Societies, or wishing the least contest with them on that subject, we consider and *declare* it to be an essential right of the said Protestant Episcopal Church, to have and enjoy the continuance of the said three Orders of Ministers forever, so far as concerns matters purely spiritual; and that no persons, in the character of Ministers, except such as are in the communion of said Church and duly called to the Ministry by regular Episcopal Ordination, can or ought to be admitted into, or enjoy, any of the "Churches, Chapels, Glebes, or other property," formerly belonging to the Church of England, in this State, and which, by the Constitution and Form of Government, is secured to the said Church forever, by whatsoever name she, the said Church, or her superior Order of Ministers, may, in future be denominated.

IV. That, as it is the right, so it will be the duty, of the said Church, when duly organized, constituted and represented, in a *Synod* or *Convention,* of the different Orders of her Ministry and People, to revise her Liturgy, Forms of Prayer, and Publick Worship, in order to adapt the same to the late Revolution, and other local circumstances of America; which, it is humbly conceived, may and will be done, without any other or farther departure from the venerable Order and beautiful Forms of Worship

of the Church from whence we sprung, than may be found expedient in the change of our situation from a Daughter to a Sister Church.

The foregoing Declaration was made in a Convention of the Clergy of this Church, held at Annapolis, on the Thirteenth day of August, in the year of our Lord 1783; and recognized and confirmed in Convention of the Clergy and Lay Delegates at Easton, on the Thirty-first day of May, in the year of our Lord, 1790: And signed,

Attest: WILLIAM WEST
JOHN BISSETT, President[67]
Secretary.

This action, which seemed advisable to make the position of the Church publicly and authoritatively known, was followed by the passing of the Maryland Vestry Act—a partial exception to the rule of complete separation between Church and State in the United States. This act was adopted by the General Assembly of Maryland in 1798. It not only provided in detail for the administration of the Episcopal Church in the state but gave it a semiofficial status. Indeed, the church wardens were recognized as civil officers with the right of apprehending persons guilty

of any breach of the peace, or of any disorderly conduct, or of making a noise in any Church or Chapel, or in the Church or Chapel yard, or other enclosures, so as to disturb the congregation, and to turn such person out of the Church, Chapel yard, or other enclosures thereto belonging; and it shall be the duty of any person (who may be called upon) to assist the Church Warden in the before-mentioned duties.[68]

In 1802 the Assembly repealed so much of this act as conferred powers of civil officers of the peace on church wardens, but in nearly all other respects the Vestry Act of 1798 continues to be the law under which the Episcopal Church is governed in Maryland today; and as the present District of Columbia is all in what was formerly the state of Maryland, the act applied to the Episcopal Church in the District, until modified by Act of Congress in 1947 so as to permit vestries in that portion of the diocese included in the District greater freedom in the election of vestrymen.[69] In other words, a detailed system of Church government, including such matters as the election of vestries, the call and tenure of ministers, the keeping of registers of baptisms, marriages, and burials, the conditions under which the property of the Church may be sold, aliened, or transferred, etc., are specifically provided for by legislative action. It is believed to be the only case in the United States where the Church in modern times has had even a quasi-official status before the law. Many Episcopal clergymen have wished it modified; partly because some of its provisions, such as those which make a vestry almost supreme, have not been liked, and partly because it is considered inconsistent in the United States for a Church to have

its administration so minutely defined by civil law, and to be recognized by the State as having, at least according to the letter of the law, almost a privileged position. On the other hand, the giving of large powers to the vestry is favored by other groups as a democratic procedure, even though it is recognized that the bishop has not the same right to settle disputes between rector and vestry that he has in all other American dioceses, and that is provided as the norm under the canons of the Protestant Episcopal Church.[70]

In 1892 the Court of Appeals of Maryland, which has jurisdiction over the portion of the Diocese of Washington that includes that state, reached a decision in the Hipkins case. This declined to allow the bishop of the diocese the usual Episcopal right, which he claimed in this case, to decide in a dispute between a vestry and a rector over the tenure of a rectorship. The Maryland Vestry Act gives the vestry power to choose a minister "to officiate for such time as the said vestry may think proper," while the canons of the Protestant Episcopal Church in this country state: "nor may a rector or minister be removed therefrom by said parish or vestry against his will," etc., but it adds "That this canon shall not be in force . . . in any diocese with whose laws or charters it may interfere."[71] The court reached its decision by considering that under this last clause the canon was not applicable in a case coming under the Maryland Vestry Act.

It took the Episcopal Church decades to overcome, especially in the North, the record of the Revolutionary period, when so many of its clergy were loyalists. And yet it made progress under the Constitution adopted in 1789. By 1792 there were five bishops. In 1817 the General Theological Seminary was organized, and in 1820 and 1821 we find the founding of the Domestic and Foreign Missionary Society. But the greatest step forward was taken in 1835, when the General Convention changed the constitution of the Board of Missions to include in its membership every baptized member of the Church, and elected the Reverend Jackson Kemper (1789–1870) a missionary bishop, his jurisdiction including ultimately virtually all the Northwest Territory.

> The history of the Church thereafter has to be written from a different angle,—from the standpoint of a centralized and aggressive Church organization rather than from the standpoint of desultory efforts bound together only by contemporaneousness.[72]

As an evidence of the movement for greater efficiency came almost inevitably the splitting up of the old dioceses. Originally it was understood that the territorial area of the diocese would be the same as that of the state. This was natural and would tend to encourage the state feeling, which was then strong. It soon however became evident, as the population increased and as the more western parts of the early states were developed, that some new arrangement

would have to be made. As a result, in 1838 the Diocese of Western New York was split off from the old Diocese of New York. This was the first example of the kind, and it was followed by many others.

Section 4. THE UNIVERSALISTS

The rise of Universalism as a separate denomination soon after the formation of the American republic was not without significance. Its principal doctrine was and is the belief that all men will ultimately be saved, a theory which had its relation to the democratic ideal of opportunity and progress. There were ministers of various orthodox churches who held Universalist views from an early date. Whether they derived them from some of the Church Fathers, such as Clement of Alexandria and Origen, or whether they came principally from the study of the Scriptures, or from independent thinking, is for our purposes relatively unimportant. They were found among members of the Church of England who were opposed to Calvinist ideas of predestination. But these were individual cases. Universalism as a denomination goes back to the landing in New Jersey in 1770 of the Reverend John Murray (1741–1815). He preached in several Eastern colonies, and settled in 1774 in Gloucester, Massachusetts. Here he built in 1780 the first American Universalist Church. It stood for the view that Church and State should be kept separate, denying the right of human authority to regulate conscience by law.

There was soon trouble with the local Congregational Church and resulting lawsuits, the contention of the opponents being that Mr. Murray's congregation did not represent a church or religious society, "not being incorporated by any order of authority known in this commonwealth—but a mere jumble of detached members,"[73] and consequently that those who attended its place of worship should support financially the regular Congregational church. The provisions of the Bill of Rights of the state were a fundamental matter which had to be interpreted. These were to the effect that

> All religious societies shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for support and maintenance. And all moneys paid by the subject for the support of public worship shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instruction he attends.[74]

In its decision in 1786 the court, according to Murray's biographer, gave an opinion to the effect that

> As the constitution was meant for a liberal purpose, its construction should be of a most liberal kind. It meant in this instance teachers of any persuasion whatever, Jew

or Mohammedan. It would be for the jury to determine if Mr. Murray was a teacher of piety, morality, and religion. That matter, he said, had in his opinion, been fully proved. The only question, therefore, before them was, if Mr. Murray came within the description of the constitution and had a right to require the money. "It is my opinion," he decidedly declared, "that Mr. Murray comes within the description of the constitution, and has a right to require the money."[75]

This decision, which permitted the Universalist congregation to employ and support its own minister, was of importance not only to the new denomination but to Episcopalians, Baptists, and other groups. It later became necessary, however, for the Gloucester Universalists to obtain an act of incorporation from the state to make their position absolutely secure.[76]

Murray was present in Oxford, Massachusetts, in 1785, at the organization of the "Independent Christian Society commonly called Universalists."[77] This new society adopted a "Charter of Compact," which was also accepted by various other Universalist groups in Massachusetts. It was not, however, until 1790, at a meeting of seven Universalist preachers and ten laymen in Philadelphia, that Universalism became organized to render national service. The meeting was honored by the attendance of Dr. Benjamin Rush (1745–1813), who was sympathetic with its purposes. The convention adopted articles of faith, a plan of church government, and various recommendations to their churches.[78] The meeting was also notable for its declaration that the holding of slaves was "inconsistent with the union of the human race in a common Saviour, and the obligations to mutual and universal love which flow from that union."[79]

The new denomination gained considerable support both from Baptists and other groups, one of its strongest leaders being the Reverend Elhanan Winchester (1751–97), who had been connected with the Open Communion Baptists. Another who should be mentioned was the Reverend Hosea Ballou (1771–1852), the most eminent and influential of American Universalist preachers.

In 1803, at a meeting in Winchester, New Hampshire, the so-called "Winchester Profession" was adopted. It was to remain the standard of denominational belief throughout the century. Its second clause, the one which represents the distinctive contribution of Universalism, reads: "We believe that there is one God, whose nature is Love, revealed in one Lord Jesus Christ, by one Holy Spirit of Grace, who will finally restore the whole family of mankind to holiness and happiness."[80]

The following year the New Hampshire Legislature passed a resolution "declaring Universalists a religious sect entitled to the constitutional privileges and immunities."[81]

A revised constitution for the denomination was adopted in 1833, when the General Convention, composed of four clerical and six lay delegates from each

State Convention, was called "The General Convention of Universalists in the United States."

> It disclaims all authority over, or right of interference with, the regulations of any State Convention or minor association, and will only exercise the privilege of *advising* the adoption of such measures and regulations as in its opinion shall be best adapted to the promotion of the general good of the cause.[82]

In the middle of the century the convention decided that its powers should no longer be merely "advisory," and from 1866, when it secured an act of incorporation, it has been an authoritative body "standing at the height of the Universalist organizations and guiding their enterprises."[83]

Such were the essential steps in the establishment of an American denomination, which, although not large numerically, and not credited with as many men of distinction as the closely related Unitarian Church, has nonetheless proved a leaven in modifying the views of many denominations on the subjects of predestination and hell, and in enlarging their interpretation of human brotherhood.

Section 5. THE GERMAN REFORMED AND THE EVANGELICAL ASSOCIATION

The churches of German origin were those that found it in many ways more difficult to adjust themselves effectively to new conditions under the republic than any other religious bodies, not excepting the Roman Catholic. This was due to a relationship to their Church authorities in Germany or Holland almost as close as that of Roman Catholics to Rome, and to the fact that those in control had had much less experience in adjusting the Church to conditions outside their own world.

The German Reformed Church, now called the Reformed Church in the United States, and to be distinguished from the Reformed Church in America —the Dutch branch[84]—was the first to organize on an American basis after the Revolution. It traces its origin to the German immigration at the end of the seventeenth century and the early eighteenth. It has been estimated that prior to the American Revolution between one hundred fifty and two hundred thousand German immigrants reached Pennsylvania alone, beginning in 1683. They came quite largely, but not exclusively, from the Palatinate. The cause of the migration was largely historical, growing out of conditions following the Peace of Westphalia (1648) at the close of the Thirty Years' War, when State–Churchism triumphed: each German State was to be Protestant or Catholic,

and Lutherans, Roman Catholics, and Reformed were alone recognized. As a result, Mennonites, Schwenkfelders, Moravians, and other groups migrated to America, as well as members of the Reformed Church from some Catholic-controlled States.

As early as 1730 half the Germans in Pennsylvania were credited to the Reform element. One of the most effective missionaries among them was the Reverend Philip Otterbein (1726–1813), who was later the founder of the United Brethren in Christ.[85] During the Revolution the members of the Church were mostly attached to the American side, though there were some German loyalists in New York and in the South. The most distinguished German patriots were Baron Frederick William von Steuben (1730–94) and General Nicholas Herkimer (Herchheimer) (1728-77). German was continued as their language, but, as the Palatinate dialect was dominant, what is called Pennsylvania German or Pennsylvania Dutch developed, admitting certain English words. The Church of the Palatinate, with Heidelberg as a center, took a special interest in the settlers and sent over many useful ministers, to such an extent indeed that it became extremely difficult for the Reformed Church in this country to become independent of German influence, and self-determining in its policy and administration. The Church also had close relations with the Dutch Reformed Church, which had shown the immigrants much kindness on their way through Holland, and which continued to help it financially. For some time the Dutch synods virtually took charge of the American Reformed churches, especially after the effort to combine both Reformed churches with the Presbyterian Church had failed in the middle of the eighteenth century. It also, in spite of some differences of theology and liturgical practices, worked in close touch with the German Lutherans. As an evidence of this we find, in 1775, the Reformed and Lutheran churches uniting in an appeal to the German citizens of New York and North Carolina to support Congress and the cause of American freedom.[86]

Most of the ministers of the "coetus," or synod, of the Reformed Church were earnest advocates of independence, and the Germans of Pennsylvania were active in organizing militia companies, but the Church was too dependent upon Holland for support to become an effective American religious body.[87]

After the Revolution the need for American-trained ministers and other leaders became more apparent, and the Reformed Church coetus united with the Lutheran ministerium in 1787 in establishing Franklin College in Lancaster, Pennsylvania. For a long time, however, it was nothing more than an academy. But it was encouraging to have Lutherans, Reformed, and the "outside community" represented on its board of trustees.

In 1791 another and more important step toward some degree of independence was taken by the coetus' passing the following resolution:

Resolved, That the Coetus has the right at all times to examine and ordain those who offer themselves as candidates for the ministry, without asking or waiting for permission to do so from the fathers in Holland.[88]

This right of ordination in America had been asserted as early as 1772, but it was now formally assumed.[89]

Two years afterward (1793) the Church separated formally from Holland, becoming an independent body. The Coetus of Pennsylvania was transformed into the "Synod of the Reformed German Church in the United States of America," and a rule was adopted that ministers received from a foreign country must remain honorary members without seat or vote for a year after arrival. This was to emphasize the importance of their new independence.[90] But it was not until 1805 that any permission was given for the use of the English language at services. The language matter now became one of controversy, with English constantly increasing in influence.

The last important step in Americanizing the Church was the establishment in 1825 of a theological seminary affiliated with Dickinson College in Carlisle, Pennsylvania. But the word "German" in the official title was not dropped until 1869.

In 1800 the first church of what came to be known as the Evangelical Association was formed among the Germans in Pennsylvania as a result of the preaching of Jacob Albright (1759–1808), an American-born German who was distressed at the lack of vital religion among his people. Most of them did not speak English, and the Methodists of his region, among whom he had been a minister, were not disposed to preach in any other language. He held a small council in 1803 of "Evangelical and Christian friends,"[91] and in 1807 the name "The Newly Formed Methodist Conference" was adopted, and Albright became its first presiding elder. In 1816 a "general conference" was held, and the denomination known as "The Evangelical Association" came into being. Later, due to differences of opinion resulting in much litigation in the American courts,[92] which reached a climax in the years 1887–93, a small group seceded and formed the United Evangelical Church. Negotiations resulted in the healing of the breach in 1922 and the assumption of the name of the Evangelical Church. In 1934 it agreed to unite with the Reformed Church as the Evangelical and Reformed Church,[93] a union fully consummated in 1941.[94] A merger between the Congregational Christian Churches and the Evangelical and Reformed Church has long been under discussion, and may be officially consummated before the publication of these volumes.

Section 6. THE DUTCH REFORMED

Another communion deeply affected by the establishment of the independent government of the United States was the Dutch Reformed Church. Its position among the Dutch settlers was not unlike that of the Presbyterian Church among the Scotch settlers and the German Reformed among immigrants from Germany. It was definitely favorable to the independence movement, and many families which have rendered important service to America have come from this religious stock, such as the Stuyvesants, Roosevelts, Livingstons, Frelinghuysens, Schuylers, Brinkerhoffs, Van Rensselaers, Van Dycks, and others. These families came from New York and New Jersey, where it was strongest. The Church in New York memorialized the state legislature on a certain matter in 1780, referring to the "just and necessary war."[95] This was characteristic of its attitude.

The American churches were originally under the care of the old West India Company, which had been dissolved in 1674, and had been transferred by a decree of the Synod of North Holland to the care of the Classis of Amsterdam. This ecclesiastical group, corresponding to a presbytery, had jurisdiction for about a century over the American churches.[96]

The classis was much interested in the formation in America of a coetus or synod of ministers and elders. This came into being in 1747; but it did not give the American churches the right to ordain young men for the ministry, and consequently they wished authority to establish a classis, which was done in 1755.[97] There followed until 1771 a period of controversy between two groups, known respectively as the "coetus" (which wanted virtual self-government) and the "conferentie"—the latter being especially conservative—over various matters, and especially over co-operation in higher education at King's College (now Columbia) and Princeton.

In October, 1764, the Dutch Reformed Church in this country, through the New York coetus, informed the Classis of Amsterdam, the highest governing authority of the Church, that it must have its independence. "We believe," it said, "that any subordination to a Church, which is destitute of all power (being under another civil government) is plainly contrary to the Netherlands Church Constitution."

> In the midst of us and all around us, the Seminaries of the Independents, of the Episcopalians and of the Presbyterians have already become seven or eight in number. And what will be the effect of all this? The Hollanders must either necessarily deny their children a free education, and thus relinquish all these advantages to others; or else send them to one of these schools. . . .

Every one must understand, that since the political government and the entire business of the land are conducted in the English language, English schools are necessary, and Dutch schools are already passing away. The Dutch language will also certainly fall into disuse, and the English will everywhere take its place. Must then the religion (of the Dutch Church) go down with the language? Or how can this danger be remedied? It is simply impracticable to receive a sufficient number (of ministers) from Holland, especially such as would be able to perform service in the English tongue. To send a sufficient number (of our young men) from America to Holland to attend the Academies of your Revs., is impossible, even as has been said before. Who, then, does not see that the Church must go down, unless we have our own ecclesiastical assemblies and Schools over here?[98]

The majority felt that all it could do was to communicate its acts annually to the Classis of Amsterdam; to consult it when it thought advisable; and to present for its consideration matters in dispute "concerning doctrine or manner of life." But these progressive views of the Americanizing element were strongly opposed by the Conferentie. The peacemaker between the two groups was the Reverend John Henry Livingston (1770–1825), who, sailing for Holland to be ordained in 1776, was "the last of the American youth who went thither for education and ordination."[99]

In 1770, Queen's College, now Rutgers, was founded by people of the Reformed faith, but it was given a very broad basis, its charter stating that it was designed

to promote learning for the benefit of the community, and the advancement of the Protestant religion *of all denominations;* and more especially to remove, as much as possible, the necessity our said loving subjects have hitherto been under of sending their youth intended for the ministry to a foreign country for education, and of being subordinate to a foreign ecclesiastical jurisdiction.[100]

To show the extent to which the Church was dominated by Dutch traditions prior to the Revolution, there was a clause in the charter to the effect that *one* professor or teacher must always be included who was "well versed in the English language"![101]

Of the thirty-four Dutch Reformed ministers in the American colonies at the time of the Union Convention of 1771, fifteen were Europeans, eight had gone to Holland for ordination, and only eleven had been ordained in America.[102]

The plan adopted had been prepared in Holland, and provided for the substantial independence which the Coetus demanded, at the same time satisfying the Conferentie group because the plan was subject to final approval by the Classis of Amsterdam. The ministers decided to abide by the doctrines and organization of the Reformed Church as established at the Synod of Dort. In addition to five particular bodies, one "general body" was to assume the priv-

ilege of licensing and ordaining men to the ministry, but their names were to be regularly transmitted for registration to Holland, to which appeals might be taken in disputed cases. Furthermore, some of the professors were to be chosen from the Netherlands. The articles of the union show the delicacy of the situation:

> We organize . . . such ecclesiastical bodies as are consistent with the government and constitution of the Church of the Netherlands, and our relation to the same, and under such titles as shall hereafter be determined. They shall provisionally be called a General Body and Particular Bodies.[103]

It should be added that the "General Body" was virtually a synod, and the "Particular Bodies" were classes without power of ordination. But immediately after independence the historic names "Synod" and "Classis" were assumed, and the articles of Church government were adapted to American needs.[104] The democratic tendency of the time was indicated by the decision that the General Synod consist of all the ministers in the Church and an elder from each congregation; that it meet triennially; and that it be given the privilege of changing by resolution its conventional character to a more representative one. All these changes were duly approved and ratified in 1792, and the General Synod was organized in 1794. So from this year on, the Reformed Dutch Church in the United States became to all intents and purposes free to develop as an independent national body. It reissued the old version of the Heidelberg Catechism in 1795, but published an English translation in 1810. English, first used in its services in New York in 1763, now became increasingly the language of the Church in America, though in some rural parishes Dutch continued until about 1820.[105] The Church is now known as the Reformed Church in America—to be distinguished from the Reformed Church in the United States, formerly known as the German Reformed Church.

These modifications in policy to adapt the Church better to American conditions had been strongly urged a generation earlier. Indeed, as early as 1754 William Livingston (1723–90), well-known publicist of New York and New Jersey, described accurately the situation that was beginning to affect all the foreign-language churches in the American colonies. He wrote in *The Independent Reflector:*

> . . . To prevent, therefore, the ruin of the Dutch churches, common sense pointed out the absolute necessity of disuniting them from the language, by translating their public Acts of devotion and worship into English, or the speedy introduction of the present translations now used by several of their churches in Holland, nothing being more certain than that the celebration of divine service in an unknown tongue, would, in a Protestant country, prove as disgustful as it would be unprofitable.

I should have imagined that nothing could be objected to the immediate execution of so necessary and obvious an expedient. No sooner, however, was it proposed, than the sticklers for high-church raised a general cry upon the occasion. . . .[106]

It took the American Revolution to make these views effective.

Section 7. THE UNITED BRETHREN IN CHRIST

The United Brethren in Christ are to be distinguished from the Church of the Brethren (Dunkers) and the *Unitas Fratrum*—the United Brethren or Moravians—who, although of earlier origin, will be considered later in this section,[107] as their effective organization under the republic was late. The United Brethren in Christ represent a movement less dependent upon Germany than the other non-Lutheran churches of German origin in the United States. They point to a definite founder in the United States, the Reverend Philip William Otterbein (1726–1813), a member of the Reformed Church born in Germany. He arrived in America in 1752 to work among the German congregations in the colonies, especially in Pennsylvania.

The New or Evangelical Reformed Church, which developed into the United Brethren in Christ, had its beginnings at the close of the war, when, in 1785, Otterbein drew up for his Reformed Church congregation in Baltimore a body of twenty-eight rules which form the basis of the United Brethren's subsequent discipline. They provide that every minister connected with the congregation "care, to the best of his ability, for the various churches in Pennsylvania, Maryland, and Virginia, which churches, under the superintendence of William Otterbein, stand in fraternal unity with us."[108]

The next important step was the holding in 1789 of the first formal conference. It was attended by seven of the fourteen ministers connected actively with the movement, nine being of German Reformed antecedents and five of Mennonite. Among the latter was Martin Boehm (1725–1812), whose strongly evangelical preaching caused Otterbein, when meeting him twenty-three years earlier, to exclaim *"Wir sind Brüder."* Thus the coming denomination was given its name, which was formally adopted at a conference in 1800 as the United Brethren in Christ. At this latter meeting Otterbein and Boehm were both elected bishops, and at subsequent conferences re-elected, and the new denomination, with its strongly evangelistic and democratic note, was fully launched. The Church has generally worked in close co-operation with the Methodists. It followed them in its condemnation of slavery, support of temperance and Sunday observance, and opposition to secret societies. It was strengthened when the union with the Evangelical Church, under way since 1942, was consummated in 1946, thus forming the Evangelical United Brethren Church.

Section 8. THE CONGREGATIONALISTS

No group played a larger part in the early development of our country than the Congregationalists.[109] At the time of the Revolution they formed the largest denomination in the United States. It dominated all of New England except Rhode Island, where Baptists and Quakers were stronger. The adoption of the Halfway Covenant in 1662, which permitted a partial church membership for those believers who could not claim any definite religious experience, had broadened its base (although its opponents felt that this resulted in many "halfway Christians"); and it had gained about 25,000 adherents in the second third of the eighteenth century as a result of the Great Awakening.[110] It was most firmly intrenched in Massachusetts and Connecticut. It has been estimated that in Massachusetts in 1770 there were 294 Congregational churches—the nearest competitors being Quakers, 18; Baptists, 16; and Episcopalians, 11.[111] Probably the proportions in Connecticut would not be far different, except that Episcopalians would have been relatively more numerous and Quakers fewer.

New England Congregationalism was intensely patriotic during the Revolution; indeed, the attitude of its leaders had done much to bring this about. The election sermons preached in Boston and other centers had become increasingly outspoken in behalf of the colonial cause. The great New England universities, Harvard (1636) and Yale (1701), had been founded and nourished by Congregationalists, and were national centers of patriotic sentiment. Furthermore, the fact that Congregationalism with its Calvinistic inheritance of responsibility for public conditions was the State Church in almost all of New England and that its ministers went *pari passu* with the sentiment of its Colonial assemblies, was important. Some of them were constructive thinkers both on ecclesiastical and political lines. For instance, none had done more to develop the democratic theory of Congregationalism, which was now to become prevalent and was destined to influence political thought, than a Massachusetts divine who flourished a century before the Revolution—John Wise (1652–1725). He believed that Congregationalism was "a pure democracy," and contrasted it with "aristocratic" Presbyterianism and "monarchic" Romanism and Episcopacy. He appealed in behalf of a wholly self-governing Church. "Power," he said, "is originally in the people." Cotton Mather's violent opposition to him is good evidence that Wise was a liberal. He was an early defender of local self-government, and, through the republication of his views in the Revolutionary period, had some influence on the thought of the founders of the country. He is believed to have been the first prominent American who opposed taxation without representation.[112]

The Congregational churches adjusted themselves, without serious difficulty, to the new national conditions. In fact, such a standard work as Professor Williston Walker's *History of the Congregational Churches* makes scarcely a passing reference to the influence of the Revolution and the formation of the new government on their polity. Owing to their democratic organization and their emphasis on self-government, they represented, in spite of their devotion in New England to their inherited Church–State tradition, a liberty-loving people. Furthermore, there was latent in this denomination an early English tradition of independency. For instance, Robert Browne (*c.* 1550–*c.* 1633), one of their great leaders, began to make his views on the subject public as early as 1580. To him a body of Christians administering their own church affairs, and choosing and ordaining their own pastors, was the ideal form of ecclesiastical organization, and the Church was to be entirely independent of the State.

No Church contributed more effective leaders than the Congregational to the cause of higher Christian education and culture in the expanding West of the second and third quarters of the last century. Oberlin, Grinnell, Beloit, Carleton, Whitman, are among the many still existing and influential colleges which it established from the Ohio to the Pacific, while several state universities were developed on the bases of existing colleges founded under the influence of the Church. The Presbyterians were their nearest rivals in this type of service.

The West developed rapidly after the passing of the Ordinance of 1787 regarding the Northwest Territory and the settlement of Marietta, Ohio, the following year. The extreme separatist tendencies of the different Congregational churches made it difficult, however, for them to unite nationally in missionary service. Indeed, the Congregationalists had nothing that could be called a national organization until the founding of the highly important American Board of Commissioners for Foreign Missions,[113] which received its charter from the state of Massachusetts in 1810, and was the first national religious society of its type. It added within a few years first Presbyterian and then Dutch Reformed members, thus becoming a great undenominational society. One of its outstanding contributions, from the point of view of the American State, was its Christianization of Hawaii, begun in 1820. Had it not been for the work of the missionaries and the influence in those islands of their descendants, it is doubtful whether Hawaii would today be a territory of the United States.

We have been considering the essential character of the Congregational churches, their organization and influence in the early decades of the republic. Let us now turn to the reverse of the picture. The only conspicuous influence of American independence on Congregationalism was that it was little by little disestablished in New England—the process not being completed in Massa-

chusetts until 1833. This change produced its temporary difficulties, but in the end resulted in strengthening rather than weakening the religious influence of all the Churches.

An interesting development during this period—due largely to the new national conditions—was the movement for union between Congregationalists and Presbyterians, begun in 1788 and resulting, from 1794 until the rupture in the Presbyterian Church in 1837, in the interchange of voting delegates between the Presbyterian General Assembly and the Connecticut General Association. Similar arrangements were also effected between the Assembly and the Congregational organizations in Massachusetts, Vermont, and New Hampshire.[114] A closely related development, also due mainly to the needs of meeting conditions in the expanding West, was the adoption in 1801 of a plan of union by which they agreed to form combined congregations in frontier settlements. This worked fairly well for a time, but there was some lack of satisfaction with the results. The official co-operation was given up in 1852 when the American Congregational Union was formed. The Church also played an important part in various undenominational movements[115] for the Christianization of the new settlements.

Section 9. THE FRIENDS (QUAKERS)

The Friends—or Quakers, as they are most commonly called—were numerically a larger group in proportion to total population in colonial times than they are today. In the beginning of the eighteenth century they were, after the Congregationalists, among the most numerous groups. Even at the outbreak of the Revolutionary War, although they had relatively decreased somewhat due to new immigration and other factors, they stood fifth in numbers among Church organizations, being exceeded only by the Congregationalists, Presbyterians, Baptists, and Anglicans.

George Fox (1624–91), their remarkable founder, had begun to preach in 1647. He emphasized the "inner light," simplicity of life and worship, opposition to war and oaths, kindness to sufferers and the outcast, the separation of Church and State, and other features which have since marked their society. Two Quakers had arrived in Boston in 1656, and they and their successors received shameful treatment from New Englanders, especially in Massachusetts, which did all in its power through anti-Quaker laws, fines, etc., to discredit them and prevent their remaining in the colony. In 1658 it went so far as to adopt the death penalty for Quaker missionaries who returned after banishment. This persecution did not cease until 1677.[117] The only New England colony

which treated them fairly was Rhode Island, which in two decades had come largely under their control. It is interesting to note that as early as 1673 those who had conscientious scruples were exempted from military service.[118]

It was Fox's visit to America in 1671 that gave the movement a great stimulus, especially in Rhode Island, Eastern New York, New Jersey, Pennsylvania, North Carolina, Delaware, and Maryland. Its growth from then until the second half of the eighteenth century was remarkable, especially in North Carolina, from which, however, many of the most representative Friends migrated about 1800 to Ohio and Indiana as a protest against slavery.

William Penn (1644–1718), a follower of Fox but a very different type of man, and a profound believer in religious freedom, undertook in 1681 his "Holy Experiment," namely, the attempt to establish a "free colony" in Pennsylvania, where all who came should receive "civil and religious liberty" and economic opportunity. The government succeeded for some seventy years, maintaining peace with the Indians, avoiding all religious and political oppression, abolishing oaths, establishing happy and prosperous communities, advocating the cause of the Indian and the slave. The colony also encouraged immigration from oppressed groups in Germany and other parts of Europe.

During this period the Pennsylvania Friends became actively interested in the antislavery cause. In 1688 the German Friends at Germantown adopted a protest "against the traffic in the bodies of men" and against handling "men as cattle."[119] This is believed to have been the first official protest of any religious body against slavery in what is now the United States. The yearly meeting in 1696 voted "not to encourage the bringing in of any more negroes," and in 1711 the Pennsylvania Assembly, largely through Quaker influence, prohibited further importations.[120] Among the greatest early apostles of antislavery were the active Quakers, John Woolman (1720–72) and Anthony Benezet (1713–84). In 1758, on Woolman's urging, the Philadelphia yearly meeting directed a visitation on all who held slaves, and forbade those "concerned in importing, selling, or purchasing slaves" from attending meetings, while in 1776 slave holders were to be "disowned," which meant expelled, if they refused to manumit their slaves.[121] Although not an abolitionist, Woolman believed that the holding of slaves as property was wrong. He is now considered one of the heroes of Negro emancipation. His attitude and the resulting actions of the Quakers had a profound influence on the ultimate solution of the slavery problem.

In 1756 the Quakers, who had been a dominant force in Pennsylvania political life, vacated their seats in the Pennsylvania Assembly, and others declined to be candidates for their positions. The society discouraged members from holding office from that time on during the colonial period.[122] In most other colonies

they had had a hard time to secure the right of suffrage. In New Jersey they acquired it first in 1713; in New York, in 1735.[123]

The War of the Revolution brought serious problems, owing to the society's antiwar convictions. The Friends were sympathetic with the desire of Americans to obtain redress of grievances, but most of them remained neutral so as to avoid all warlike measures. They provided the first considerable group of "conscientious objectors" in our history. As they refused to serve in the army or militia, they were frequently suspected of Tory sympathies, and their property was seized to pay for substitutes or lost by their refusing to pay war taxes. They were also virtually shut out of teaching school in Pennsylvania, for during the war the Assembly required a patriotic test oath of all teachers. Even some of the useful Friends' schools were closed. There was, however, especially in Philadelphia, a group known as free or fighting Quakers who erected a special meetinghouse of their own. The extent to which the members of the society were embarrassed by the conflict between patriotism and religious principle is shown by the public discussions of the time; by the fact that their quarterly meetings were not infrequently forbidden on the ground that they were "centers of plotting" against the American government; and by the further fact that fines against them for various charges involving their patriotism amounted during the war to about £35,000.[124]

The high regard in which Quakers were held by the fathers of the republic, in spite of their failure to give more active support to the war for independence, is shown in a letter written by Washington in October, 1789, "To the Religious Society called Quakers, at their Yearly Meeting for Pennsylvania, New Jersey, Delaware, and the western part of Maryland and Virginia." He said:

> Your principles and conduct are well known to me; and it is doing the people called Quakers no more than justice to say, that (except their declining to share with others the burthen of the common defence) there is no denomination among us, who are more exemplary and useful citizens.
>
> I assure you very explicitly, that in my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness; and it is my wish and desire, that the laws may always be as extensively accommodated to them, as a due regard to the protection and essential interests of the nation may justify and permit.[125]

The founding of the new government affected the Quakers less than most groups because of the local democratic form of organization to which they were already accustomed. An important development, however, was the spreading of their work to the West. Yearly meetings were established in Ohio (1813), Indiana (1821), and so on. The separation between the Orthodox and Hicksite

Quakers in 1827–28 interfered with their work, while they also suffered from the criticism of many because of their lack of outspoken support of the Revolutionary cause and their overemphasis on matters of discipline. Probably their greatest contribution during this period continued to be their interest in the welfare of the colored people and of the Indians. They could not, however, identify themselves with abolitionism, partly because they did not sanction political parties, and partly because the methods of the abolitionists seemed to them inconsistent with the peaceful religion of Christ.[126] Their work for the Indians has been discussed in another section.[127] One feature of it it seems well, however, to mention here, as it brings out the historic background. In 1869 President Grant (1822–85), in his first annual message to Congress, outlined his plans for using the services of the Society of Friends as an aid to the government in dealing with the complex Indian problem. He said:

From the foundation of the government to the present, the management of the original inhabitants of this continent, the Indians, has been a subject of embarrassment and expense, and has been attended with continuous robberies, murders, and wars. From my own experience upon the frontiers and in Indian countries, I do not hold either legislation, or the conduct of the whites who come in contact with the Indian, blameless for these hostilities. The past, however, cannot be undone, and the question must be met as we now find it. I have attempted a new policy toward these wards of the nation (they cannot be regarded in any other light than as wards), with fair results so far as tried, and which I hope will be attended ultimately with great success. The Society of Friends is well known as having succeeded in living in peace with the Indians in the early settlement of Pennsylvania, while their white neighbors of other sects in other sections were constantly embroiled. They are also known for their opposition to all strife, violence, and war, and are generally noted for their strict integrity and fair dealings. These considerations induced me to give the management of a few reservations of Indians to them, and to lay the burden of the selection of agents upon the Society itself. The result has proven most satisfactory.[128]

This clearly shows the high regard in which the character and discretion of the Friends were held by the government. The president further referred to this same matter in his message of 1870:

The experiment of making it a missionary work was tried with a few agencies given to the denomination of Friends, and has been found to work most advantageously. . . . Indian agencies being civil offices, I determined to give all the agencies to such religious denominations as had heretofore established missionaries among the Indians, and perhaps to some other denominations who would undertake the work on the same terms, i.e., as a missionary work. The societies selected are allowed to name their own agents, subject to the approval of the Executive, and are expected to watch over them and aid them as missionaries, to Christianize and civilize the Indian, and to train

him in the arts of peace. . . . I entertain the confident hope that the policy now pursued will, in a few years, bring all the Indians upon reservations, where they will live in houses, have schoolhouses and churches, and will be pursuing self-sustaining avocations, and where they may be visited by the law-abiding white man with the same impunity that he now visits the civilized white settlements.[129]

It is interesting to remember that when Herbert Hoover (1874–), a Quaker, became president of the United States two generations later, he also laid special emphasis on improving Indian conditions, and called to the two leading posts in the Bureau of Indian Affairs Quakers of outstanding reputation.

Speaking generally, Quakerism has kept itself from interference in public affairs, except as it has consistently opposed war and advocated various social welfare projects and minority rights. Essentially it is a very simple personal religion which has made a point of carrying over its faith into life and work.

The Quakers had considerable difficulty in the early days because their preachers were not in the sense generally contemplated by law ordained ministers, and consequently were denied various rights that were granted to nonconformist ministers.

Section 10. THE BAPTISTS, INCLUDING THE CHURCH OF THE BRETHREN (DUNKERS)

The beginning of the Baptist Church in the United States goes back to Roger Williams, whose work for religious freedom is described in another section.[130] He established a community in Providence, Rhode Island, and set up a church there in 1636. In 1639, having become convinced of what he believed to be the error of infant baptism, he decided to obtain rebaptism as a mature person with religious convictions. Others joined him in this step, Ezekiel Holliman baptizing Williams, and Williams baptizing the other members of the company. Because of this rebaptism they were frequently referred to as Anabaptists—the name by which their predecessors were known at the time of the Reformation.

The leaders of the Baptist Church in the second half of the seventeenth century and in the eighteenth century were strong advocates of religious freedom, partly on principle, and partly because they were persecuted by the established churches in Massachusetts, Virginia, and elsewhere. Roger Williams (1604?–83), John Clarke (1609–76), Isaac Backus (1724–1806), John Leland (1754–1841)—all Baptist ministers or teachers—were among those responsible for making complete separation of Church and State a cardinal principle of the communion,[131] and a potent American ideal.[132] In spite of such leaders as these the established churches, both Congregational and Anglican, considered most

Baptists uneducated, and somewhat dangerous fanatics who cared little about law and order. This view was brought out clearly on the eve of the Revolution in a statement made to the court in 1771 by the proprietors of Ashfield, Massachusetts. Regarding the people called "baptists or anabaptists," they said:

> Some have left the Churches and gone to those people because they had been guilty of such offences as justly exposed them to a kind of discipline to which they could not feel themselves willing to submit. And some have had the effrontery to say, that the standing ministry is corrupt, ministers themselves unconverted, the churches impure & unholy, admitting unconverted and unsanctified persons into their communion &c.[133]

Outside of Providence and a few other centers the Baptists did not reach many of the educated classes, but unquestionably did much to maintain and develop an interest in religion, especially in small communities. As the denomination had no strong central organization and represented many different separatist tendencies, it had several branches. For example, in 1719 members of the Church of the Brethren (German Baptists) settled in Germantown, Pennsylvania, starting the conservative group known as Dunkers or Tunkers (from German *tunken,* to dip). They took a stern stand in favor of simple living, opposition to oaths and war, conservative theology, and abstention from all political activities. Nonresistance was a fundamental principle of the Church. Although supporters of the Baptist principles of immersion and of separation of all religious bodies from the State, they generally retained their independence without active identification with the larger Baptist churches.

Baptists gained the respect of Benjamin Franklin largely because they had no formal theological creeds. They did not even publish their Articles of Faith, thinking that they had reached no finality in this matter and that they might find new truth. It was this point of view that gained Franklin's commendation: "This modesty in a sect is perhaps a single instance in the history of mankind, every sect supposing itself in possession of all truth, and that those who differ are so far in the wrong."[134]

The Baptists were aided by the Great Awakening in the second third of the eighteenth century,[135] and by the growth of the independence movement from 1774 on, as many as nineteen associations being organized.[136] These almost without exception became centers for advancing the cause of civil and religious liberty, which were considered as two sides of the same shield.

It was characteristic of the Baptists' activity for religious freedom that they staged a meeting in its behalf in Philadelphia at the time of the first session of the Continental Congress. It laid special emphasis on the unfortunate Church–State connection in Massachusetts, and urged that the new government should appreciate the evils of establishment. President James Manning (1738–91) of

Rhode Island College (now Brown University) read a petition to the effect that:

It has been said by a celebrated writer in politics that but two things were worth contending for,—Religion and Liberty. For the latter we are at present exerting ourselves . . . and surely no one whose bosom feels the patriotic glow in behalf of civil liberty can remain torpid to the more ennobling flame of Religious Freedom.[137]

This was perhaps the earliest example of a religious "pressure group" trying to influence legislation in the history of our Federal government, which was then on the way to formation. It would be well if such groups always had so clear and convincing a case as the Massachusetts Baptists of 1774.

The Baptists were quick to adjust themselves to the new conditions brought about by the Revolution, as the freedom, both civil and religious, involved was most congenial to them. Their congregational system did not, to be sure, seem to demand a national organization, but they formed associations and general committees in various cities, counties, and states. It is evident from their discussions that, whereas they highly approved the provision of the Constitution against any religious tests for public office, they wanted the Federal government to go further in guaranteeing religious liberty. A good example of this is the action of the General Committee of the Baptists of Virginia which sent a letter drafted by the Reverend John Leland,[138] chairman of the committee, to President Washington in 1788. This contains an important statement regarding the recent struggles for civil liberty. It then says:

When the Constitution first made its appearance in Virginia, we, as a society, feared that the liberty of conscience, dearer to us than property or life, was not sufficiently secured. Perhaps our jealousies were heightened by the usage we received in Virginia, under the regal government, when mobs, fines, bonds, and prisons were our frequent repast. Convinced, on the one hand, that without an effective national government the States would fall into disunion and all the subsequent evils; and, on the other hand, fearing that we should be accessory to some religious oppression, should any one society in the Union predominate over the rest; yet, amidst all these inquietudes of mind, our consolation arose from this consideration—the plan must be good, for it has the signature of a tried, trusty friend, and if religious liberty is rather insecure in the Constitution, "the administration will certainly prevent all oppression, for a WASHINGTON will preside." . . .[139]

Furthermore, the Baptists now began to organize on a national basis, one of their reasons being to have a stronger position from which to secure complete religious freedom in the states. Finally in 1814 representatives of eleven of the eighteen states then in the union, meeting in Philadelphia, organized the General Missionary Convention of the Baptist Denomination of the United States

of America for Foreign Missions.[140] They constituted a board of commissioners, twenty-one in number, and arranged for a triennial convention. From this beginning there developed by the time of the second convention in 1817 a national educational and home missions movement.[141] This commanded the respect of thoughtful people outside the denomination who had been alarmed by the emotional vagaries of some of its early adherents, and who feared that the excesses of the early German Anabaptists might be repeated in America. In 1832 the Baptist Home Missionary Society was established. The denomination was now well fitted to do home mission work along the expanding national frontier in the South and West. Among its representatives on this frontier none deserves to be remembered more than the Reverend John Mason Peck (1786–1858), pioneer preacher and teacher in many states but especially identified with Illinois. He spanned the period between Thomas Jefferson and Abraham Lincoln. He had Jefferson's good will and encouragement, and did much to prepare Illinois for the antislavery work of Lincoln. He founded schools and churches, a teachers' college, a theological seminary, and several useful periodicals. He also promoted the Home Missionary and Publication societies of his church, wrote well-known guidebooks for emigrants going West, collected historical material, proclaimed the gospel, and in other ways laid firm foundations for a settled society. "Perhaps no man of the class did more than he to guide the thoughts, mold the manners, and form the institutions of the West."[142]

The Baptists today are typical of those groups who have fought heroically to secure their own freedom from State interference and would fight again to maintain it; but in freedom of thought and teaching, or even freedom for certain other groups, such as Roman Catholics on the one hand, and liberal theologians on the other, their record has not been so uniformly good. Professor John Mecklin (1871–) has recently well expressed the underlying truth in this type of attitude:

> When a persecuted and disinherited group has become intrenched, rich, and powerful, it has become so concerned with preservation of its own peculiar type of piety that it has looked askance upon the spirit of free criticism and inquiry that made its success possible.[143]

But there are many exceptions, as the history of the theological schools of the University of Chicago and Rochester, with their Baptist inheritance, proves. A broad view is also characteristic of the careers of some great preachers and educational leaders of the denomination, of whom Dr. Harry Emerson Fosdick (1878–), the late President William H. P. Faunce (1859–1930) of Brown University, President William Rainey Harper (1856–1906) of the University of

Chicago, and Professor Walter Rauschenbusch (1861–1918) are eminent examples.

Section 11. THE UNITARIANS

Unitarianism, as a form of religious belief emphasizing the unity of God and denying Trinitarianism as an explanation of the Godhead, is an ancient belief. In England such men as John Milton (1608–74), John Locke (1632–1704), and William Penn (1644–1718) held Unitarian views; but their most distinguished modern theological leader was James Martineau (1805–1900). Some trace the beginning of the Unitarian Church in this country to the adoption by King's Chapel, Boston, in 1785, of a new form of liturgy from which all references to the Trinity were dropped. There were other movements in and around Boston in the early days of the nineteenth century as a result of which the Unitarian Church, as a separate denomination, was gradually developed. The date generally taken as representing the beginning of the independent denomination in the United States is the sermon by William Ellery Channing (1780–1842) of Boston in 1819 in Baltimore, because in it he gave the statement of beliefs generally accepted by those members of the Congregational and other churches who denied the Trinitarian doctrine. Here and in Charleston, South Carolina, had been established two years earlier the first American Unitarian churches outside the Boston area.[144] In 1820, the year after the Baltimore sermon, came the decision of the Supreme Court of Massachusetts in the Dedham case, which enormously strengthened the Unitarians, by allowing them, even though a minority, to retain the church property they were occupying after a majority had withdrawn in the interest of their inherited orthodoxy.[145]

In 1825 the American Unitarian Association was formed. From that time until the end of the century Unitarianism, though it split the Congregational Church, was a great factor in broadening the social interests of the churches; in promoting independent thinking on theological, civic, educational, and other matters; in advancing the welfare of the Negro; and in urging various reforms on the State. From its earliest days the Unitarians have been strong supporters of religious freedom and of the importance of the Church aiding the State through the encouragement of social reform. Lyman Beecher (1775–1863) described its influence in the early decades of the nineteenth century:

> All the literary men of Massachusetts were Unitarian. All the trustees and professors of Harvard College were Unitarians. All the elite of wealth and fashion crowded Unitarian churches. The judges on the bench were Unitarian, giving decisions by which the peculiar features of church organization, so carefully ordained by the Pilgrim fathers, had been nullified. The Church, as consisting, according to their belief,

in regenerate people, had been ignored, and all the power had passed into the hands of the congregation. This power had been used by the majorities to settle ministers of the fashionable and reigning type in many of the towns of Eastern Massachusetts. The dominant majority entered at once into possession of churches and church property, leaving the orthodox minority to go out into schoolhouses or town halls, and build their churches as best they could. Old foundations, established by the Pilgrim fathers for the perpetuation and teaching of their own views in theology, were seized upon and appropriated to the support of opposing views. A fund given for preaching an annual lecture on the Trinity was employed for preaching an annual attack upon it, and the Hollis professorship of divinity at Cambridge was employed for the furnishing of a class of ministers whose sole distinctive idea was declared warfare with the ideas and intentions of the donor.[146]

During the second and third quarters of the century the great eastern Massachusetts family names of Adams, Bigelow, Emerson, Perkins, Lowell, Shaw, Quincy, Peabody, Parkman, and many others honored for their contributions to literature and citizenship became identified with Unitarianism. It is noticeable, however, that in the late decades of the nineteenth and the first quarter of the twentieth century many of their representatives identified themselves with the Episcopal Church or some other communion representing a relatively orthodox position in theology.

Although the Unitarians represented much more of an intellectual and social elite, they shared many views with the Universalists. The denomination had in the last century such outstanding thinkers, after Channing, as Ralph Waldo Emerson (1803–82), Theodore Parker (1810–60), and Charles W. Eliot (1836–1926), and many of the leaders both of the abolition movement and of the New England literary revival. In 1865 its churches, which had always inherited the Congregational form of government, formed a national conference and became active in extending the influence of the denomination. Their purpose was to appeal to those who wished to unite "pure religion and perfect liberty." The covenant in general use expresses the main emphases of Unitarianism: "In the love of truth, and in the spirit of Jesus, we unite for the worship of God and the service of men." In this spirit the Church has always emphasized the vital importance of tolerance, though occasionally lapsing into intolerance in its attitude toward those religious bodies which lay stress on dogmatic beliefs.

Section 12. THE LUTHERANS

The Lutherans had more difficulty than most Protestant groups in adjusting themselves to the new conditions. The devotion of most of them to German or to some Scandinavian language persisted, while the death of "the Patriarch," the Reverend Henry (Heinrich) Melchior Mühlenberg (1711–87), after ten years

of partial retirement, deprived them of their ablest and most farsighted leader. He had arrived in America in 1742, having been chosen the previous year for the American mission by Professor August Hermann Francke of Halle, the Pietist leader. It took him and his associates the better part of a century to bring about anything approaching unity, and their devotion to the traditions of their own European nation of origin and to their own denominational schools tended to keep them, in spite of their high standards and ideals, out of the main stream of American civic and religious life. Yet even here some progress in adjustment to the new State conditions is noticeable, and their dependence on Europe, and especially on the Church authorities in Halle, decreased. Their well-organized and well-taught parochial schools continued, and did important work in education and religious training; but their stubborn devotion to the use of German as the language of instruction tended to their losing ground in the East after the public schools became firmly established in the middle of the century.[147]

The first important step in adjustment to American conditions was taken in 1748, when a synod—originally called "The United Pastors," but later the Ministerium of Pennsylvania—was organized in Philadelphia under Mühlenberg's influence by a meeting of six ministers, twenty-four lay delegates, and the council of St. Michael's Church, which had just been dedicated. This led ultimately to the independence of the Lutheran Church in the United States, which at the outbreak of the Revolution included more than a hundred congregations in Pennsylvania and about a third of that number in the other colonies.

In 1779 the Revolutionary War broke the close bond with Halle and threw the American Lutherans even more on their own responsibility. Mühlenberg's career as an American clergyman who preached in English as well as in Dutch and German,[148] and that of his distinguished sons who combined being Lutheran ministers and leaders of patriotic public opinion, did much to integrate the Church into American life.

His recently published *Journals* show his devotion to the cause of democracy and his interest in the American colonies. He became a citizen of Pennsylvania, but he could not forget his birth in Hanover, of which the English king, George III, was elector, as well as the inherited aloofness of Lutheranism from political independence. Consequently we are not surprised that the action of his two clerical sons, Peter and Frederick, in identifying themselves actively with the patriot cause, caused the neutral father much distress.[149] But he was strongly in favor of fitting the new immigrants for effective participation in American life and bringing about a unity of feeling among them.

It would be a most desirable and advantageous thing [he wrote] if all the Evangelical Lutheran congregations in the North American States were united with one another,

if they all used the same order of service, the same hymn-book, and, in good and evil days, would show an active sympathy and fraternally correspond with one another.[150]

Other steps forward were the organization of the New York Synod, 1785, and the introduction of lay delegates into an American Ministerium for the first time in New York in 1792. Intermarriage with other non-Lutheran Protestant stock, such as Huguenots and Presbyterians, now became more frequent; theological tests were made less rigid; the Church united increasingly with the general evangelical movement after about 1810;[151] and the Synod of Ohio and adjoining states was formed in 1818.

During this period the language question was uppermost. *A Hymn and Prayer Book for the Use of such Lutheran Churches as use the English Language*, the "first mode" of the existing book, was published in 1795; English was adopted by the New York Ministerium in 1807. St. John's English Lutheran Church was founded in Philadelphia in 1810 after St. Michael's, by a narrow majority, had declined to call a third pastor who would conduct services in English. Ten years later dissension arose in the new parish, and the matter was carried to the courts, where the German party lost. The historian of the church says:

> The argument that seems to have convinced the court was based on the necessity of cultivating the American spirit and the futility of depending on the immigration of a "turbid current" of aliens for the future progress of any Church in the Republic. The times were not favorable to the maintenance of national distinctions within America.[152]

A similar controversy arose in Lancaster, where the Lutheran congregation refused to contribute to the treasury of the synod until young men were educated to preach in English.

The beginnings of a union movement are seen in the action of the powerful Ministerium of Pennsylvania in 1818 in passing a resolution to the effect that "in its judgement, it would be well if the different Evangelical Lutheran Synods in the United States were to stand in some way or other, in true union with one another. . . ."[153] This movement resulted in the organization of the General Synod.

The organization meeting was held in Hagerstown, Maryland, in October, 1820, four synods being represented; and the first general convention of the Church took place the following year at Frederick. This General Synod of the Lutheran Church in the United States now had large advisory powers, and was authorized to make plans for educational seminaries and missionary institutions, as well as to provide aid for ministers and their families, and to take measures to "promote the practice of brotherly love and the furtherance of Christian concord."[154]

The chartering of the Theological Seminary of the General Synod in Gettysburg in 1827 and of Pennsylvania College in 1833 were also important events in giving the denomination educated American leadership of a high order. But the Lutherans, though rendering a large spiritual service to the immigrants from Northern Europe, had difficulty in developing unity among themselves because of their differences of national origin. As a result, the large group of Germans reaching St. Louis in 1838 brought about the foundation of the Missouri Synod, and in 1853 the Norwegians in the Northwest established a separate synod which, when united with other groups, formed what is now known as the Norwegian Lutheran Church of America. The Augustana, the strong Swedish Synod, was established in 1860. In 1866 the General Council was organized, but the Missouri Synod and some smaller groups did not join.

In 1918 the United Lutheran Church in the United States was formed by the merger of the General Synod, the General Council, and the United Synod of the South—a body formed as a result of Civil War controversies. It placed its forty-five synods on the same doctrinal basis, committed them to the same general practices, and made possible common action in the fields of general benevolence and missionary work. This brought together the groups for whose development, unity, and American outlook Mühlenberg had striven more than a century before.[155] The merger was followed in twelve years by the union in the American Lutheran Church of three heretofore separate groups—the Joint Synod of Ohio, the Iowa Synod, and the Buffalo Synod.[156]

In general there has been much progress toward unity and full Americanization among Lutherans of different national origins. But in spite of a constantly increasing minority which feels that the Church has a large responsibility for social and political conditions, Lutherans have continued their European tradition of aloofness from any active participation as churchmen in the affairs of State. They have not been specially interested in the problems of religious freedom.

Section 13. THE DISCIPLES OF CHRIST

No religious body is more definitely an American product than the Disciples of Christ (sometimes known as Churches of Christ or Christian Churches), and it is therefore natural that the denomination should have been committed to the ideal of religious freedom. It developed on the frontier, and was an attempt to restore primitive Christianity. The movement that resulted in its foundation goes back to the great religious revival which took place in the Appalachian region in the early years of the nineteenth century.[157] There were five ministers of the Presbyterian Church in Ohio and Kentucky who were interested in

preaching what they believed to be the simple truths of Christianity, and felt outraged because the Presbyterian Synod had taken action against one of their number for his creedal views. The synod felt that old-time Calvinism must be maintained at all hazards, while this group was opposed to hard and fast denominational creedalism and was interested in a simpler form of doctrine based entirely on New Testament preaching. It consequently withdrew from the synod and organized the Springfield Presbytery. This was in turn brought to an end by a document signed by its members on June 28, 1804, entitled "The Last Will and Testament of the Springfield Presbytery."

> With deep concern they viewed the divisions and party spirit among professed Christians, principally owing to the adoption of human creeds and forms of government. While they were united under the name of a Presbytery they endeavored to cultivate a spirit of love and unity with all Christians; but found it extremely difficult to suppress the idea that they themselves were a party separate from others. . . .[158]

The document proceeded to state that they planned to continue as Christian ministers, and closed with the words:

> We heartily unite with our Christian brethren of every name in thanksgiving to God for the display of his goodness in the glorious work he is carrying on in our western country, which we hope will terminate in the universal spread of the gospel and the unity of the church.[159]

They stated in this "last will and testament" that they would take the Bible as the standard of faith and rule of life to the exclusion of all man-made creeds, and would adopt the name "Christian." This they believed to be of divine authority, and that it was better than all sectarian and denominational designations. They sought from the first union with all who believed in Jesus Christ.[160] They became active under the leadership of the Reverend Barton Warren Stone (1772–1844) and others, and were joined by various Baptist and Methodist groups—especially the one known as Republican Methodists.

In addition to this group of "Christians," a second and equally important stream came into the movement—largely as a result of Stone's influence—through the Reverend Thomas Campbell (1763–1854), a Scotch Presbyterian, who arrived in the United States in 1807. His son and family joined him the next year. They had been much interested in Scotland in the movement for reunion, and both father and son had the advantage of study at the University of Glasgow. Thomas Campbell became a Presbyterian minister in Western Pennsylvania, where he invited all Christians so disposed and duly prepared, without any reference to denominational conditions, to unite in the communion. As a result, the presbytery found him worthy of censure, and he appealed to

the Associate Synod of North America. In his statement before the synod he said, among other things:

> How great the injustice, how greatly aggravated the injury will appear, to thrust out from communion a Christian brother, a fellow-minister, for saying and doing none other things than those which our divine Lord and his holy apostles have taught and enjoined to be spoken and done by his ministering servants, and to be received and observed by all his people![161]

He stated that he was perfectly willing to be judged by the divine "standard" given in the Bible.

The synod released Mr. Campbell from censure, but believed that the feeling against him on account of his liberal spirit made it advisable for him to withdraw, which he did. There was then formed what was known as "The Christian Association of Washington, Pa." This was in 1809. It issued a "Declaration and Address," of which the first proposition was:

> That the Church of Christ upon earth is essentially, intentionally, and constitutionally one; consisting of all those in every place that profess their faith in Christ and obedience to him in all things according to the Scriptures, and that manifest the same by their tempers and conduct, and of none else; as none else can truly and properly be called Christians.[162]

The tenth proposition began with these words, which represent perhaps the most distinctive contribution of the Disciples to American Church thinking. Its purpose was to do away with denominationalism.

> That division among Christians is a horrid evil fraught with many evils. It is antichristian, as it destroys the visible unity of the body of Christ; as if he were divided against himself, excluding and excommunicating a part of himself. . . .[163]

It was of this "Declaration" that Henry Adams said that it "expressed so wide a popular want that this church, in a few years, became one of the largest branches of the great Baptist persuasion."[164]

When Alexander Campbell (1788–1866), cofounder with his father of the Disciples of Christ, arrived in the autumn of 1809, he approved the document, but stated that if they were true to their principles they would have to give up the requirement of infant baptism and some other practices.

This denomination represented a new effort on the part of frontier Christians "to gather into a single group the religious people who, coming from many churches and traditions, had been moulded to a common pattern by the West."[165]

On May 4, 1810, the Lord's Supper being observed that day, as it has been every Sunday since, the Christian Association decided that it was necessary to organize itself into an independent Church of Christ. The new Church, which

was at Brush Run, in Washington County, soon united with the Baptists, whose views were similar; but since 1830 it has again become independent.

The group represented by Stone, the "Christians," and the group represented by Alexander Campbell, the "Disciples" or "Campbellites," finding, after talks and conferences on various occasions, that they had virtual identity of spirit and purpose, consummated a union in 1832 in Lexington, Kentucky. The Bible was the only basis of their creed. We are told by a historian of the Disciples that

> . . . the actual union was a gradual process conditioned by the growth of acquaintance and the discovery of community of spirit and purpose on the part of individual members and local churches. Within three or four years the process of unification was complete—so far as it was ever completed. Campbell traveled in the east and northeast, 1832–34, visiting the Christian churches. Stone, on removing to Jacksonville, Ill., in 1834, found two churches there and refused to unite with either of them until they should unite with each other—as they did.[166]

Stone favored the old name "Christian," Campbell, the name "Disciple," so it happens that the group is sometimes known as "Christians," sometimes as "Disciples of Christ," while some followers of Stone who refused to accept the merger persisted in the name "The Christian Church."

So came into being an organization which now numbers over a million and a half, principally in the Middle West and Southwest. It is the type of independent organization which, with its ideas of freedom and lack of ecclesiastical authority or State connection, could never have come into existence prior to the organization of the republic. "Each local church is under Christ, a self-governing unit." It is also characteristic of one stream or wing of American religious thought which has resulted in the "community church movement"—namely, the feeling that dogmatic beliefs are much less important than uniting in worship and service in the spirit of Christ.

"Their historical position," reads a statement adopted in 1947, by the International Convention of the Disciples of Christ in Buffalo, "has given them practical insight into the New Testament fellowship which they desire to share with the whole divided body of Christ."[167]

The border states of the Middle West will always feel under special obligations to this undenominational denomination which has grown up with them and contributed so much to their development. This relationship is brought out in a book with the appropriate title *Religion Follows the Frontier—A History of the Disciples of Christ*.[168] The denomination was part of the movement of "the common man" which developed in the frontier region of the Middle West, and which showed itself in the election of Andrew Jackson to the presidency in 1828.[169] It was a democratic revolt against the conventions, the conservatism,

and the formalism of the older civilization of the Eastern states. It was Congregational in its form of organization but co-operative and inclusive in its underlying spirit.

Section 14. THE MENNONITES

The Mennonites are such small, independent, and loosely related groups that it is hard to give a definite date for their reorganization after the Revolution. They derived their name from one Menno Simons (1492–1559), a Dutch reformer living in Zurich. These industrious, peace-loving, and mostly rural groups are of interest to us in this study because of their attitude toward the State. They repudiate oaths, lawsuits, the holding of office, and the bearing of arms—views still persistently held by a majority of members. Although originating in Switzerland, where they separated from the Zwinglian State-Church because they believed that no such connection was authorized by the Bible, and because they rejected infant baptism, they gained many followers in neighboring countries, especially in Germany and the Netherlands.

Their first settlement on our shores was at Germantown, Pennsylvania, in 1683. Here, under the leadership of Francis Daniel Pastorius (1651–1719), hero of Whittier's poem "The Pennsylvania Pilgrim," there settled in that year a group of German and Dutch Mennonites and Quakers. It was also there that the settlers drew up the first protest against slavery in America, 1688. This declared that buying or selling slaves or holding them in bondage was "an act irreconcilable with the Christian religion."[170] These simple God-fearing people went quietly about their work with little heed to the opinions or affairs of the world. This tendency was carried to such an extent that in 1709 Germantown lost its rights as a municipality because none of its citizens would serve as mayor or sheriff.[171]

It is significant that the earliest copies of the Bible printed in America, other than the Eliot Indian Bible, are due to the early German settlers of Germantown. There were so many of the closely related groups of German Protestant separatists—Baptists, Dunkers, and Mennonites—that there was great need of Bibles in their native tongue. An early arrival, Christopher Sower, or Saur (1693–1758), and his son (1721–84) first imported German Bibles, and then developed an important publishing firm, which issued many practical, devotional, and other religious works. Their quarto Bible, in the German translation of Luther, appeared in 1743, after three years in press. Other editions were published in 1763 and 1776. The Mennonites were the largest group to profit by all this work, as the Lutherans and German Reformed preferred to continue to import their own Bibles, without the few additions from the Berlenburg Bible

which Sower introduced to satisfy the Mennonites.[172] At any rate, the Sower family made an important contribution to the spiritual and cultural life of the Germantown community, and the fact that it made available for the Mennonites a Bible printed in America, and that from about the middle of the century they began to publish books in English, tended to identify them more with their new country.

In the seventy years after the Germantown settlement several thousand Mennonites had reached eastern Pennsylvania, coming mostly from South Germany and Switzerland. For the most part they held firmly during the Revolution to their principle of nonresistance. The Dort Confession of 1632, which gives the standard Mennonite Articles of Faith, is definite on this matter. Article XIV says:

> As regards revenge or defense, in whom men resist their enemies with the sword, we believe and confess that the Lord Jesus Christ forbade His deciples, His followers, all revenge and defense, and commanded them, besides, not to render evil for evil, nor railing for railing, but to sheath their swords, or in the words of the prophet, "to beat them into plough-shares." . . .[173]

This tendency to establish their social tenets on proof texts or individual incidents in the Bible is shown even more strikingly by the Mennonites and some related sects of Anabaptists when they base their objection to serving as magistrates by quoting the well-known incident recorded in the sixth chapter of St. John's Gospel where Christ refused the crown offered to him. The argument is sincerely used but it is one which hardly seems conclusive to impartial people, at least in application to the rank and file of laymen.

Special taxes and fines were therefore imposed upon the members of this religious group during the Revolution for their pacifist views. Some paid these and rendered noncombatant service. Others served prison sentences rather than contribute in any way to the cause of war. They were perplexed as to their political allegiance. They felt grateful to Penn and the British crown for the toleration afforded them in a British colony, and yet their lot was to live in the New World. When the Pennsylvania Assembly set up a Revolutionary government and required an oath of renunciation and allegiance, many, though in no sense Tories at heart, declined to submit. One result was a considerable migration to Canada. Here they and the Quakers still form the leading religious pacifist groups. Those who remained finally succeeded in securing documents of privilege both from the colonial Assembly of Pennsylvania and from the Continental Congress exempting them from military service.[174]

The formation of the American government seems to have effected less change in the Mennonite Church than in any other American religious body.

There is no evidence that the ideas and practises of the Pennsylvania Mennonites were directly affected by the ideology of the American Revolution. They continued to use the German language in their religious services for more than a hundred years. There are no official actions on record, which reflect any direct adjustments to American conditions after the Revolution.[175]

In a word, they, even more than some other German religious groups, constitute the exception which proves the rule that the formation of the American government profoundly influenced in a relatively short time the organized religious bodies of the nation.

The first change of any importance took place in the fourth decade of the nineteenth century. Then there was a considerable immigration of members of their faith from Europe, especially Switzerland and Bavaria, where many Mennonites had become more liberal while their Pennsylvania brethren continued their narrow, intramural existence. These new immigrants settled largely in Ohio, Indiana, Illinois, and Iowa. They no longer wore the peculiar garb of the early days, were less exclusive; and many of them began to use English, to identify themselves with the community, and in various ways to differ from the Amish and other extreme separate Mennonite groups in Pennsylvania. They received a further large immigration of relatively liberal Dutch-Russian settlers from the Ukraine in 1873.[176] There are at present some seventeen small Mennonite bodies with a membership of 126,559,[177] two-fifths of them being in the most important body, the Mennonite Church.

The most conservative members of this conservative group have been and still are the Amish people of Pennsylvania. Some idea of their opposition to all liberalism may be shown by the names of their two principal bodies. These are known as the Old Amish Order, which still uses only the German language and accepts no innovations, and by contrast, the less extreme group, which calls itself the Conservative Amish, and holds services in both German and English. We shall meet them later in connection with the discussion of public school problems.[178]

Section 15. THE MORAVIANS (UNITAS FRATRUM OR UNITED BRETHREN)

The Moravian Church had its origin among some of the followers of John Huss (1369?–1415) in Bohemia in 1457. Its major emphases have been and are belief in a life based on the Scriptures, spiritual evangelism, foreign missions, and education. Moravians have retained the episcopate and the sacraments, and have been greatly interested in deepening the Christian life and in Christian fellowship. Because of this the Church is known as the *Unitas Fratrum* or

United Brethren—not to be confused with the United Brethren in Christ, an American denomination considered earlier in this section.

Although originating in Bohemia and carrying on its work with great effect in Moravia, under Bishop John Amos Comenius (1592–1670), its roots for this country go back to Herrnhut, the estate of Count Nikolaus Zinzendorf (1700–60) in Saxony. This place became the spiritual headquarters of the Moravian movement as well as an industrial center which did much to support its missionary work.

A company of Moravians bound for Georgia in 1735 deeply influenced John Wesley (1703–91), and through him the religious life of England, but it is with the Moravians in Pennsylvania that we are most concerned. The colony at Bethlehem was founded in 1741, largely from the Georgian group whose major significance was in connection with its fine work among the Cherokee Indians. Bethlehem is specially connected with Count Zinzendorf, an idealist of sterling character, beauty of spirit, and Christian earnestness, who came to America after his banishment from Saxony in 1736 because, as Frederick William I of Prussia said, "he wished to live piously though a count."[179]

The Bethlehem settlement consisted of one hundred and twenty persons, all deeply imbued with an evangelistic ideal. There developed there and in two other settlements a system of life that was Spartan in its simplicity and rigor. The so-called "economy" was semicommunistic in that time and labor were given to the community, although property was still personal. In return for work in the various industries and activities of the Church the members of the community received the necessities of life. By 1747 some thirty-two industries were in operation in addition to farms. It was really a civic-religious settlement based on the idea of a Christian republic. Municipal affairs as well as church affairs were referred to a congregational council which served virtually as a town meeting. Defects in the system were the overemphasis on the use of the lot in selecting officers, which was believed to be a democratic procedure, the failure to lay sufficient emphasis on the family unit, and lack of adequate differentiation between civic and religious responsibilities. In Bethlehem and the other communities the Moravians stood, as did the Quakers, in opposition to the bearing of arms and the taking of oaths—beliefs which they have largely maintained to this day, but the extreme form of the "economy" lasted only about fifteen years.

A serious difficulty was that everything was in the last analysis controlled from Herrnhut in Saxony, and it was not until shortly before independence that the Bethlehem congregation acquired from the Herrnhut Unity the ownership of the Bethlehem property. During the war most of the Moravians took a neutral position, although the general hospital of the American army was established at

Bethlehem. The Brethren cheerfully responded to supplies for the army, but each man under fifty paid the tax of three pounds and three shillings rather than render military service.[180] Although not themselves active in the Revolutionary War, they had a strong influence in the councils of the Iroquois and Delawares, which was instrumental in restraining them from war activity which might have been very detrimental to the American cause.[181]

In 1782 a General Synod of the Church was held at Herrnhut, but no relief in the way of independent control was given to the American Moravians. This fact, together with the continued use of the German language, the tendency to overemphasize certain phases of piety, and the exclusive nature of their settlements, resulted in the Church losing much of its influence as a denomination in America. Even after the formation of our government administrative affairs had to be referred to an executive board in Europe. Probably no other religious society, except that of the Mennonites, adjusted itself with so great difficulty to the new conditions which came after independence. As the historian of the denomination states, "Ultra-conservative tendencies crushed any American desire for adaptation to the needs of the time." Even the establishment of a seminary for Moravian ministers in America in 1807 did not counteract these tendencies. It too was dominated by European ideas, and its first professors were inducted into office by an official visitation from Germany. It was not until 1847 that an American executive board—hitherto appointed by the authorities in Germany—was authorized to be elected by the American Synod.[182] Indeed, it was not until the General Synod in 1857 that the American Church was given a provincial constitution which enabled it to be relatively independent.

Section 16. THE NEGRO DENOMINATIONS

An interesting indirect result of the movement for the establishment of the American union is seen in the development of separate Negro churches. Up to the time of the Revolution and its resulting independence the Negro slaves had generally to be content with religious meetings in the open, or with occupying the gallery or a section in the back of white churches in those parts of the country, such as Virginia, where the relations between owners and slaves were the most friendly. They had not often had the education necessary to enable them to become ministers themselves, and the laws of some colonies would not have permitted their organizing independent churches even if they had had the wish to do so. The Baptists and Methodists both appealed largely to the Negroes, partly because of their opposition to slavery, partly because of their emphasis on congregational singing and their appeal to the emotions, and partly because

they showed themselves specially interested in improving the lot of their less fortunate brethren.

The immersion ceremony of the Baptists made a special appeal. The first Negro church in America organized at Silver Bluff near Augusta, Georgia, in 1773, was a Baptist church. Four or five other churches are known to have been organized between 1776 and 1788, mostly in Virginia, though there was no association of Negro Baptist churches until 1836.

In 1787 the colored people of Philadelphia held a meeting to consider their condition as Christians and what they could do to improve it. They formed the Free African Society. From this came two movements resulting from the divergent ideas of the two men who at this meeting were chosen "overseers"—Absalom Jones (1747–1818) and Richard Allen (1760–1830)—both born slaves. Jones was ordained a deacon in the Episcopal Church and became rector of its first colored congregation in this country, St. Thomas' Church, Philadelphia, built in 1794.

Allen, who had bought his freedom and acquired considerable property, was ordained to the Methodist ministry, and in 1793 built Bethel Church in the same city. The platform adopted by the congregation included an important statement on the question of Negro control of the denomination:

> We consider every child of God a member of the mystical body of Christ; . . . yet in the political government of our church we prohibit our white brethren from electing or being elected into any office among us, save that of a preacher or public speaker.[183]

On June 10, 1794, they adopted a resolution explaining the reasons why they desired a church of their own. This referred to the "many inconveniences which have arisen from white people and people of color mixing together in public assemblies; more particularly in places of public worship," and their belief that they could advance their work better as a separate organization. Asbury ordained Allen a deacon on June 11, 1799, he being the first man of his race so ordained in this country, the members of Bethel Church agreeing to continue under the jurisdiction of a white elder of the Methodist Episcopal Church.

In 1816 the people of Bethel Church organized themselves into an independent body, adopting, however, the doctrines of the Methodist Episcopal Church as their standard, and continuing to use the "Discipline" with a few modifications. They held their first general conference in April, 1816, when Allen, who had previously been ordained an elder, was elected bishop and consecrated by prayer and the laying on of hands by five local elders. This was the beginning of the African Methodist Episcopal Church.[184]

Another highly important Negro denomination also started in the early days of the republic (1796). A colored Methodist church in New York City developed in 1821–22 into the African Methodist Episcopal Zion Church.[185]

The movements for Negro churches would not have taken place, at least so early, had it not been for the independence of the United States from Great Britain. The feeling of self-governing institutions was in the air, and it was carried over into the Negro population even before the Civil War had established their freedom. It is interesting to note that most of the early developments were in Virginia and in Pennsylvania, in both of which there were large numbers of free Negroes, and the economic status of the race was considerably better than in the deep South.

There was, however, considerable opposition in the South to separate Negro churches, especially after the insurrection in Virginia in 1831 under Nat Turner (1800–31). He was a Negro preacher, who believed himself chosen of the Lord to free his people, and as his uprising involved the slaying of over fifty whites, there was a tendency to identify the Negro Church with it, and consequently to discourage separate Negro services of slaves unless some white man was present. Most Negro pre-Civil War ministers devoted themselves in their sermons to religion and the future life, accepting the slave status, but providing an emotional escape from its tedium and abuses. But probably only a minority of the slaves at the time of emancipation were nominal Christians.[186]

After the Civil War the Negroes were either no longer permitted to worship in the white churches, or preferred to worship separately, so the movement for independent Negro churches gained ground. A good many Negro preachers turned politicians during Reconstruction and gained experience in leadership and organization, which after the close of this period they used to advance the Negro Church movement. This undertaking, involving the organization of local and national Church bodies, provided Negroes with training in self-government and in the use of their newly acquired freedom that was to prove invaluable. The part which the Negro Church has played, and is playing, in fitting its members for the ultimate discharge of the duties of political citizenship has not been given adequate recognition. It has been important in the North and will appear clearly in the South as the suffrage is extended more and more to Negroes. During the post-Reconstruction era the Negro preacher stood out in practically all Southern rural regions as the acknowledged local leader of his race, and the natural liaison between the white people and the Negroes.[187]

The present status of the Negro Church in its relation to the State and public problems will be discussed in a later section.[188]

Section 17. THE OTHER OLD AND NEW DENOMINATIONS

Space does not permit an account of all the other denominations found in the United States in the early days of the republic, but at least two deserve passing mention: the Church of the New Jerusalem, because of the influence of the distinctive views of its founder, Emanuel Swedenborg (1688–1772); and the Church of Jesus Christ of Latter Day Saints, because of its later contests with the State and its influence in Utah and neighboring states.

The teachings of Emanuel Swedenborg were brought to America in 1748, but public lectures on them seem to have been first given in Philadelphia and Boston in 1784, by a visiting Scot. A Swedenborgian church was established in Baltimore in 1792, five years after the formal organization of the first New Jerusalem church in England. It was followed by others in Philadelphia, Cincinnati, and New York. In 1817 the first general convention of the denomination was held in Philadelphia, some seventeen "New Church" societies uniting. From this time on through the century the teachings of the Church had an influence far beyond the confines of the denomination, due to its remarkable publishing activities. Its books influenced many intellectuals, notably Emerson and the Transcendentalists. Some of the members have become very active as advocates of Christian socialism, the single tax, and other reform movements.[189]

Of the American Churches which developed in the first half of the nineteenth century, next to the Disciples of Christ, the Church of Jesus Christ of Latter Day Saints has become the largest. Its *Book of Mormon*, with its alleged revelations to Joseph Smith (1805–44), was published in 1830, and the new Church was founded the same year, at Fayette, New York. As its history—which is of special interest in the field of Church-State relations—dates from a later period than that covered in this chapter, it will be dealt with later.[190]

The Shakers, an interesting religious society with a communistic basis, which dates in this country from 1774, will be discussed when "Communistic and other New Religious Communities" are considered.[191]

Section 18. SUMMARY OF THE EFFECTS OF INDEPENDENCE ON THE PROTESTANT CHURCHES

As we study the general effect on the Protestant churches of the establishment of a new and independent republican form of government in place of the old colonies, we notice certain characteristics of what is sometimes called "American religion." Among these are the following:

(1) The political separation from Europe and the winning of independence inevitably encouraged denominationalism with its advantages and disadvantages. Every group could have a Church of its own liking, as all Churches were now independent of the State. As a result, some entirely new denominations were established and other old denominations organically divided. For example, the Christians (1804), the Disciples (1810), and the Cumberland Presbyterians (1814) all originated in withdrawals from the Presbyterian Church; and the main body divided first into "Old School" and "New School" assemblies, and later divided further—mainly over the slavery issue. This list might be largely extended. Suffice it to add that even the Friends lost their unity through the separation in 1827–28 of the followers of Elias Hicks (1748–1830), who founded the Hicksite Quakers. This tendency to divide and multiply denominations was accentuated by several factors. The spirit of freedom that was prevalent; the life of the frontier with its isolated communities; the growing split over slavery, which resulted in the larger Protestant churches, with the exception of the Episcopal, being divided into Northern and Southern groups; the Second Awakening, which developed in the first few years of the nineteenth century, and the growing revival of religion and independent conviction which followed it; and the immigration of groups from Northern Europe with strong national traditions and feelings.

Francis J. Grund (1805–63), a Bohemian-born American publicist, published in 1837 *The Americans in Their Moral, Social and Political Relations*. In it he shows that he saw clearly this American tendency to extreme independence in church matters. He wrote that "For America, every clergyman may be said to do business on his own account, and under his own firm,"[192] which is but another way of emphasizing the well-known saying that every American carries his religion "under his own hat"—a tendency that has grave dangers and also the advantages that accrue from sincere convictions.

The sad fact is that before the nineteenth century was a third over the American pattern of extreme denominationalism had taken firm root, with many new communions of which the world had never before heard. These to be sure met at the moment the special needs of various groups; but when many sects wished to have separate churches in the same small community, the problem of support and of common unity of effort in behalf of religious and social welfare became difficult. And the most tragic thing about the resulting situation was that in most cases the splitting of the historic religious groups weakened the impact of the Christian religion upon public opinion. This would have been unnecessary in most cases had there been a sounder knowledge of Church history and more tolerance. But the challenge of the Western frontier, especially after the adoption of the Ordinance of 1787 and

the acquisition of the Louisiana territory in 1803, did lead to larger co-operation —at least for the time—among the Protestant churches.

(2) The support of the churches—except as a few Germanic-language groups continued to receive help from abroad—became entirely a voluntary matter, due to the fact that state subsidies were a thing of the past. The Baptists were leaders in the movement for voluntary support, especially in states like Virginia, Connecticut, and Massachusetts, where the State-supported Church died hard.

In the early years it was difficult to make the necessary readjustments to assure adequate support for the cause of religion, but in the end this separation of Church and State undoubtedly strengthened the religious forces of the nation by placing a much larger measure of responsibility on the church membership. The fears of its opponents, such as Lyman Beecher, that separation would harm the cause of religion, especially by cutting off the main support of its work, were in no way justified. We have shown this especially in the important case of Connecticut, when the state ties with Congregationalism were finally cut in 1818 and the Church placed on a self-supporting basis,[193] but the Church in Virginia was almost equally fast in recovering, in spite of the loss of its glebe lands. The recovery was due in no small measure to the spiritual stimulus given by the Methodist movement.

Grund's testimony is interesting. He had this to say, in 1837, about the effect of self-support:

> When we reflect that no tax is imposed for the support of ministers, or the building of churches, and that consequently all those establishments are the result of voluntary contributions of the people; the conviction will certainly be forced on our minds that the Americans are deeply impressed with the importance of religious instruction, and that together with their freedom they prize nothing so high, as the sacred truths of Christianity. No more satisfactory evidence is required on this subject, than the fact that they are willing to *pay* for it; which is certainly a singular coincidence when contrasted with the political position of other countries. If there were an established religion of state, I doubt whether half the money could be raised for its support which is now cheerfully expended for the maintenance of twenty-five different doctrines.[194]

Writing in the middle of the last century, Dr. Robert Baird (1798–1863), a Presbyterian, who remembered vividly conditions at the time of his youth, after calling attention to the unfortunate status of the Established Church in the latter years of the colony of Virginia, refers to the remarkably good effect of separation of Church and State in raising the character of the clergy and turning the Church into a vital missionary agency. He says:

. . . What a change! How wonderfully has all been overruled by God for good! Instead of perpetual wrangling with their parishioners and the law officers about the taxes on tobacco levied for their support, as was formerly the case: they are supported, in a way hereafter to be detailed, I do not say extravagantly or abundantly, but in general comfortably, by the contributions of their congregations. And instead of being disliked, to use no harsher term, I have reason to believe that they are universally respected, and greatly beloved, by the members of other churches.[195]

Similar testimonies are available for many states. The change in support was quite in keeping with the Protestant point of view that religion is a personal matter, in which the State, as such, has no direct concern further than to see that laws and conditions are fair and friendly without favoritism to any denominational group.

The new problems of self-support raised incidentally some unexpected Church–State problems. These had to do especially with questions of what constituted legally valid pledges. Under what conditions were provisional subscriptions valid? Were subscriptions obtained on Sundays collectible? What constitutes a legal consideration for making a subscription, and must a church incorporate if subscriptions to it are to be considered binding? May a person after subscribing to a church change his mind and cancel his pledge? These are typical of questions which began to trouble the churches and which have been before the courts ever since. Zollmann, who discusses this matter at length, sums up his major conclusions by saying that donations to churches "will be upheld by the courts, where they are fully executed, whether they consist of money, property, or services."[196] To a layman this seems self-evident, but legally the matters involved have been much argued.

(3) The emphasis on evangelism became noticeable. The new freedom and the new responsibility, combined with the opening up of new territories, resulted in much emphasis on evangelistic effort, as already shown.[197] That this was sometimes accompanied by extremes cannot be doubted, but on the whole the missionary zeal developed was a healthy sign.

(4) The Churches became more democratic in their organization and administration, with a larger amount of power given to the laity. This was true everywhere, although in the Roman Catholic Church the hierarchy and priesthood succeeded in retaining all authority in matters of doctrine and ecclesiastical polity.[198] As far as local trusteeship of property[199] is concerned, there was a long struggle where the Church maintained its old tradition, but there is probably no other place in the world where lay opinion has as much influence in Catholic circles as in the United States.

American Protestantism had been prepared for lay participation in church

administration in colonial times, not only by frontier conditions in many places which prevented adequate clerical supervision, but by specific factors such as the lay eldership among the Presbyterians, and the "consociations" with their standing councils of ministers and lay delegates which became a feature of Connecticut Congregationalism early in the eighteenth century;[200] but it was only after the Revolution that the laity came to their own in a large way. The organization of the Protestant Episcopal Church in the United States of America in 1789 with its significant provision for a House of Clerical and Lay Delegates to share with the bishops the lawmaking of the Church through General Convention; the participation of laymen with the clergy in the election of bishops in most Protestant churches with the episcopal office; the control of church finances, as well as the election, almost everywhere, of parish ministers, by laymen; the leadership of laymen in many of the great national organizations for Christian education and missionary work founded in the first quarter of the nineteenth century; the growing part played by unordained evangelists, Sunday school superintendents, and teachers; and the rights of laymen in the newly formed American Churches such as the Methodist Episcopal, with many unordained local ministers, and the Disciples—all these are evidences of this tendency which came with independence to give the laity a much larger share in American church work and administration.

The same tendency began to appear in the control of colleges established by religious denominations. For instance, in 1792 Yale College, with its strong Congregational ministerial tradition, provided by act of the legislature for some laymen on its governing body.

(5) The forces of religion and of religious toleration were definitely strengthened in most parts of the country. We have seen the removal of remaining barriers against the Jews; the growth of interdenominational societies among Protestants; the starting of denominations which minimized doctrinal barriers, such as the Methodists and the Disciples of Christ; and the integration of American Catholics into national life, in spite of the beginnings of certain threatening anti-Catholic disturbances which arose with the large immigration, especially Irish, in the second third of the century.

The Bohemian-American publicist quoted is again a good authority. Here are three exceptionally revealing quotations from his book giving impressions of the United States in the 'thirties.

. . . Although the most perfect tolerance exists with regard to particular creeds, yet it is absolutely necessary that a man should belong to some persuasion or other, lest his fellow-citizens should consider him an outcast from society. The Jews are tolerated in America with the same liberality as any denomination of Christians; but if a person were to call himself a Deist or an Atheist, it would excite universal execration. Yet there

are religious denominations, in the United States, whose creeds are very nearly verging on Deism; but taking their arguments from the Bible, and calling themselves followers of Christ, they and their doctrines are tolerated, together with their form of worship.[201]

The religious habits of the Americans form not only the basis of their private and public morals, but have become so thoroughly interwoven with their whole course of legislation, that it would be impossible to change them, without affecting the very essence of their government. . . .[202]

. . . The Americans look upon religion as a promoter of civil and political liberty; and have, therefore, transferred to it a large portion of the affection which they cherish for the institutions of their country. . . .[203]

These quotations may well serve as a summary of the major effects of independence on the American churches.

Chapter XII

THE ROMAN CATHOLIC ADJUSTMENTS TO AMERICAN CHURCH–STATE CONDITIONS

The Roman Catholic Church[1] has waged a long fight in the United States against laws and public opinion which have interfered in any way with its standing and with the complete equality of its members in political rights and privileges. In this struggle leaders in the Church have found it advisable to modify some of the traditional attitudes on matters which it does not consider fundamental, so as to adjust itself to the American requirement of separation of Church and State and of equal treatment by the State of all law-abiding religious bodies.

Section 1. THE COLONIAL BACKGROUND OF DIFFICULTIES

Most of the early American settlers came from England, and, as is well known, Protestant England found its principal enemies in Catholic France and Spain. Successive British sovereigns and parliaments from the time of Elizabeth to George III by the passage of various laws—some even of a penal character—sought to weaken the Roman Catholic faith in England, and even to eradicate it. In this they showed intolerance and at times cruelty. The people of England, however, had a right to be disturbed at some of the actions of the popes and of the Church in earlier centuries, and it is not difficult to see why the "No Popery" battle-cry received popular support. It is, however, extraordinary that a "Christian nation" like England should have developed a body of public opinion that was in some respects so unfair to a branch of the Church Universal. This opinion (which Michael Williams, 1877– , a devout Catholic layman, believes to be traceable very largely to John Fox's *Acts and Monuments*, etc., 1632, popularly referred to as the "Book of Martyrs") was naturally inherited by most of the colonies settled by Englishmen in the course of the sixteenth and seventeenth centuries. Many Catholic historians, explaining this antipapal prejudice, have frankly acknowledged that the abuses of the Church of Rome were largely responsible for it. For instance, one of the most honored of them, a Jesuit, the late Reverend Herbert Thurston, in his *No Popery*, says—re-

ferring to himself—that no one "could use more uncompromising language . . . in condemning the terrible abuses which prevailed in the Tenth and part of the Eleventh century. . . ."[2]

So the colonists inherited from England and Germany strong opposition to the abuses and claims of Rome. Many of the colonial charters, and their own later legislative enactments, contained severe restrictions against "Papists," whose numbers outside Maryland were extremely limited. Even Maryland, which in the early days had developed a fine spirit of toleration under its Roman Catholic proprietors, repealed in 1654 its Toleration Act of five years earlier, and enacted a law to the effect that "none who profess to exercise the Popish religion, commonly known by the name of Roman Catholic religion, can be protected in this province."[3] For a considerable period here and elsewhere Roman Catholics were excluded from officeholding. Indeed, in the beginning of the eighteenth century Rhode Island and Pennsylvania were the only ones of the original thirteen colonies in which Roman Catholics could enjoy a large measure of religious and civil rights.[4] Elsewhere, except for the four years of the reign of the Catholic king, James II (1684–1688), they were legally denied the essentials of religious freedom, and were generally required to pay toward the support of the locally established church.[5] The Puritans were inclined to favor John Cotton's well-known dictum that "it was toleration that made the world anti-Christian."

The Dudleian lectures at Harvard in 1751 will serve as a striking illustration of this spirit. There were four lectures annually, of which one was

> for the detecting and convicting and exposing of the idolatry of the Romish Church; their tyranny, usurpations, damnable heresies, fatal errors, abominable superstitions, and other crying wickedness in her high places.[6]

The passing of the Quebec Act[7] in 1774, by which Roman Catholics were given protection by the British in Quebec and in the region west of the Ohio, fanned this latent flame. Protestant Americans feared that this would mean ultimately an end to their liberties, which they believed were bound up with the Christianity of the Bible—a book the Roman Catholic Church did not then encourage its lay members to read and would not indeed allow them to read in the King James or Geneva versions most common in the colonies.

The reaction to the Quebec Act is specially significant. This measure, which seems on the whole reasonable, gave Catholics the right to "have, hold, and enjoy the free exercise of the religion of the Church of Rome,"[8] and provided that the "clergy of the said church may hold, receive, and enjoy their accustomed dues and rights with respect to such persons only as shall profess the said

religion."[9] As a result of this enfranchisement the Continental Congress on September 5, 1774, issued an address to the people of Great Britain in which it was stated:

We think the Legislature of Great Britain is not authorized by the Constitution to establish a religion, fraught with sanguinary and impious tenets, or to erect an arbitrary form of government in any quarter of the globe. . . . By another act the dominion of Canada is to be so extended, modelled and governed, as that by being disunited from us, detached from our interests by civil as well as religious prejudices, that by their numbers daily swelling with Catholic emigrants from Europe, and by their devotion to administration so friendly to their religion, they might become formidable to us, and on occasion be fit instruments in the hands of power to reduce the ancient free Protestant colonies to the same state of slavery with themselves.[10]

John Jay (1745-1829), afterward Chief Justice of the United States, always an intense Protestant, was the author of this address. This incident more than any other will show the determination of most of the people in the American colonies at the outbreak of the Revolution to oppose the spread of Roman Catholicism among them. An American Roman Catholic historian of distinction gives it as his opinion that except for Franklin, Jefferson, and Washington, few colonial leaders failed to denounce Catholics more or less strongly at one time or another. He adds that the press was uniformly hostile.[11] This was especially because of its fears that Quebec Roman Catholicism would spread south. Extreme intolerance of this kind seems to us today unfortunate and hard to explain, but with a knowledge of the bitter opposition of the Roman Catholic Church toward Protestantism and religious freedom in those days it is understandable.

Prior to the middle of the eighteenth century "Pope Day"—the anniversary of the Gunpowder Plot on November 5—was observed in some places in Massachusetts and other colonies, the pope in effigy with the devil being paraded through the streets of New England towns. It was in many ways the counterpart of Guy Fawkes Day in England, and its celebration frequently ended with "the burning of the Pope." President Washington had no sympathy with this extreme anti-Catholic propaganda and favored toleration. He issued a well-known order on the subject.

As the Commander-in-Chief has been apprised of a design formed for the observance of that ridiculous and childish custom of burning the effigy of the Pope, he cannot help expressing his surprise that there should be officers and soldiers in this army so void of common sense as not to see the impropriety of such a step at this juncture; at a time when we are soliciting, and have really obtained the friendship and alliance of the people of Canada, whom we ought to consider as brethren embarked in the same cause— . . .[12]

It is probably needless to go into further details. The Roman Catholics in what is now the United States were, speaking generally, badly treated prior to the Revolution. A recent Catholic historian has described their condition graphically by saying that "The century and a half preceding the victory of Yorktown was the epoch of life-in-the-catacombs for the Catholics in the future Republic."[13]

Section 2. THE EARLY STEPS IN ORGANIZING THE ROMAN CATHOLIC CHURCH IN THE UNITED STATES—THE LEADERSHIP OF FATHER JOHN CARROLL

The American Revolution and the start of the United States government resulted in many changes in political conditions which proved helpful to the Roman Catholic Church. It had to overcome much prejudice and opposition in almost all the colonies, due partly to historical reasons; to the tie-up of the colony with an Establishment, or at least with laws favoring Protestants; or to the feeling that it owed "allegiance to a foreign prince"—the pope. From 1757 to the Revolution, the vicar apostolic of London had held jurisdiction for the Church of Rome over all the colonies and islands in America that were subject to the British Empire.[14] There was, however, no one in the colonies who could administer the rite of confirmation. This meant that thousands of Roman Catholics could not be adequately cared for. Consequently in 1763 Bishop Richard Challoner (1691–1781), then the vicar apostolic, wrote to the Propaganda in Rome: "Now that Canada and Florida are reduced to British sway, the Bishop of Quebec might, with the consent of our court have his jurisdiction extended by the Holy See to all English colonies and islands in America."[15]

He personally favored one or more prefects or bishops living within the colonies, but this did not seem feasible, since it was feared that it might result in violent persecution by the civil authorities who were not sympathetic with the Church. This feeling was so strong that in 1765 two hundred and fifty Catholic laymen of Maryland united in a protest—the so-called Laity Remonstrance—against the appointment of an apostolic vicar. They said:

> . . . 4. Neither this province, nor indeed any one of the British American colonys has ever hitherto had one of that Ecclesiastical rank & dignity. Would not our setting the 1st. example of y^{t} kind appear very bold & presuming, if not also even dareing and insulting? . . .[16]

Furthermore, in a letter from Charles Carroll of Annapolis (1703–83), father of Charles Carroll of Carrollton, to Bishop Challoner regarding this remonstrance under date of July 16, 1765, we find a reference to the same matter:

. . . Yr. Ldship must know, yt for many years past attempts have been made to establish a Protestant Bishop on this continent, and yt such attempts have been as constantly oppos'd thro the fixed avertion ye people of America in general have to a person of such a character. If such is the avertion of Protestants to a Protestant Bishop, with wt. an eye will they look upon an Apostl. Vicar? . . .[17]

Nothing could show more clearly than these two extracts the difficulties which any form of "prelacy" would be obliged to meet and overcome in this country.[18]

In addition to the passing of the Quebec Act already discussed,[19] the suppression of the Jesuit order (July, 1773) had further complicated the situation, since many of the priests in America were members. In spite, however, of the presence of European priests there was a large group of Roman Catholics who favored independence, of whom the most conspicuous representative was Charles Carroll of Carrollton (1737–1832), a signer of the Declaration of Independence.[20] During the war there seems to have been almost no connection between the Church in America and its authorities in Europe, and when the war was over and the colonies separated from Great Britain the vicar apostolic of London declared that he would no longer exercise jurisdiction in what were often referred to as the "Thirteen Provinces of America."[21]

Although the principle of religious freedom made progress during the Revolution, the state constitutions and the laws passed under them still often discriminated against Roman Catholics. Only four of the new states early abolished the old penal laws and allowed Roman Catholics absolute equality with other Christians; these were Pennsylvania, Delaware, Virginia, and Maryland.[22] Almost all the other states in one way or another insisted that Protestantism should be supported, or provided that Protestants should not be denied the enjoyment of civil rights, without referring to Catholics, or adopted a constitutional clause to the effect that the truth of the Protestant religion must be accepted by all who wished to hold office in the state.[23] New York was typical. At the first state constitutional convention of 1777, when an article was proposed granting "to all mankind the free exercise of religious profession and worship," John Jay tried, as we have seen, to exclude from its scope "persons of the religion of the Church of Rome";[24] and the oath which prevented Roman Catholics from becoming citizens with the right of holding office was not removed in the state until 1806.[25] In other states political discrimination of one kind or another against members of the Church persisted still later. For instance, in South Carolina, until 1790; Georgia, until 1798; Connecticut, until 1818; Massachusetts, until 1833; North Carolina, until 1835.[26]

Many among the Protestant population of the former English colonies had serious doubts as to whether Roman Catholics, under their oath of allegiance to the pope, could be trusted to be loyal citizens of the new republic, especially in

case of any conflicts in which the Church was involved. Their doubts could be resolved completely only by experience, but during the Revolutionary period and the formative period of our government certain assurances were given abroad in widely separated and responsible Catholic sources that should have been reassuring. How well they were known in America at the time it is hard to say, but they were later quoted with great effect in a lawsuit involving the rights of Catholic priests in New York in 1813,[27] and were published that year in a widely circulated book, *The Catholic Question in America.*

The first incident involved a man greatly respected for his opposition to the tyrannical British colonial policy of the time.

In 1778 when a bill was proposed for the relief of Roman Catholics in England, a committee of Catholics waited upon William Pitt, the first Earl of Chatham, and still highly influential. He desired from them some authentic evidence from authoritative sources that certain dangerous tenets often imputed to Roman Catholics were not avowed by the Church itself. The following queries were thereupon drawn up under his auspices:

1. Has the pope or cardinals, or any body of men, or any individual of the church of Rome, any civil authority, power, jurisdiction or pre-eminence whatever within the realm of England?

2. Can the pope or cardinals, or any body of men, or any individual of the church of Rome, absolve or dispense with his Majesty's subjects, from their oath of allegiance, on any pretence whatever?

3. Is there any principle in the tenets of the catholic faith, by which catholics are justified in not keeping faith with heretics or other persons, differing with them in religious opinions, in any transaction either of a public or a private nature?[28]

These queries were sent to six leading Catholic universities on the continent, namely, the faculties of divinity of the universities of Paris, Douay, Louvain, Alcala, Salamanca, and Valladolid. The replies are of interest in and of themselves, and of special significance because they were effectively quoted in a famous American case involving the religious freedom of Catholics,[29] namely, the case in the state of New York where the seal of the confessional was at issue. The authorities named, acting independently, were unanimous in giving a negative reply to all these three questions. As the divinity faculty of the University of Paris was historically the most influential in the world, its decision is worth quoting:

Neither the pope, nor the cardinals, nor any body of men, nor any other person of the church of Rome, hath any civil authority, civil power, civil jurisdiction, or civil pre-eminence whatsoever in *any* kingdom; *and,* consequently, none in the kingdom of England, by reason or virtue of any authority, power, jurisdiction, or pre-eminence by divine institution inherent in, or granted, or by any other means belonging to the pope,

or the church of Rome. This doctrine the sacred faculty of divinity of Paris has always held, and upon every occasion maintained, and upon every occasion has rigidly proscribed the contrary doctrines from her schools.

Answer to the second query.—Neither the pope, nor the cardinals, nor any body of men, nor any person of the church of Rome, can, by virtue of the keys, absolve or release the subjects of the king of England from their oath of allegiance.

This and the first query are so intimately connected, that the answer of the first immediately and naturally applies to the second, &c.

Answer to the third query.—There is no tenet in the Catholic church, by which Catholics are justified in not keeping faith with Heretics, or those who differ from them in matters of religion. The tenet, that it is lawful to break faith with Heretics, is so repugnant to common honesty and the opinions of Catholics, that there is nothing of which those who have defended the Catholic faith against Protestants, have complained more heavily, than the malice and calumny of their adversaries in imputing this tenet to them, &c. &c. &c.

Given at Paris in the general assembly of the Sorbonne, held on Thursday the 11th day before the calends of March, 1789.[30]

There is no doubt that similar and equally satisfactory statements would be made today by the Catholic University of America or any other equally authoritative group.

The second incident arose out of the action taken by the Roman Catholic archbishops of Ireland, meeting in Dublin in 1791, regarding the misrepresentation that had arisen on the subject of their coronation oath. In reply the Congregation of Cardinals issued a letter with the authority of the pope, Pius VI. An extract from this document shows that there was no substantial difference between the attitude of the papacy and that of the Catholic universities quoted.

We perceive from your late letter, the great uneasiness you labour under since the publication of a pamphlet entitled, *The present state of the Church of Ireland*,—from which our detractors have taken occasion to renew the old calumny against the Catholic religion with increased acrimony; namely, *that this religion is by no means compatible with the safety of kings and republics; because, as they say, the Roman Pontiff being the father and master of all Catholics, and invested with such great authority, that he can free the subjects of other kingdoms from their fidelity and oaths of allegiance to kings and princes;* he has it in his power, they contend, to cause disturbances and injure the public tranquillity of kingdoms, with ease. We wonder that you could be uneasy at these complaints, especially after your most excellent brother and apostolical fellow-labourer, the Archbishop of Cashel, and other strenuous defenders of the rights of the Holy See, had evidently refuted, and explained away these slanderous reproaches, in their celebrated writings. In this controversy a most accurate discrimination should be made between the genuine rights of the Apostolical See, and those that are imputed to it by innovators of this age for the purpose of calumniating. *The See of Rome never taught, that faith is not to be kept with the*

heterodox:—that an oath to kings separated from the Catholic Communion, can be violated:—that it is lawful for the Bishop of Rome to invade their temporal rights and dominions. We too consider an attempt or design against the life of Kings and Princes even under the pretext of religion, as an HORRID and DETESTABLE CRIME.[31]

The first Roman document relative to the ecclesiastical conditions which American independence was bringing about is in the form of instructions sent by the prefect of the Propaganda with the approval of the pope—Pius VI—to the nuncio in Paris, January 15, 1783. That they were sent through France seems natural, because the vicar apostolic in London was unwilling, under the political circumstances existing, to continue to exercise jurisdiction over the Catholic churches in the former colonies, and because France had been so friendly to America in the Revolutionary War. The most important paragraphs follow:

. . . Nevertheless, the independence of the United Provinces of America having been established, and it being possible to foresee that some other country or province may pass under a new rule, it seems expedient that the Holy Father take thought and care for the exercise and for the maintenance of the Catholic religion in those states.

To this end, it is necessary that Monseigneur the Nuncio be informed that all the possessions of England on the continent, or on the islands, of America were in spiritual dependence upon the Vicar-Apostolic of London, not only in accordance with a very ancient custom, but, also, upon the authority of the decrees of the Sacred Congregation of the Propaganda, approved by several of the Sovereign Pontiffs; to which, however, there is the exception of Canada, where, after the territory had passed under British dominion, its own Bishop was left to it, at Quebec, as under French rule, conformably with article IV. of the treaty that was signed at Paris on the 10th of February, 1763. All the missionaries of the remainder of those vast territories received their powers for the exercise of the apostolic ministry from the Vicar-Apostolic of London. The number of Catholics in those English possessions, and the extent to which the Catholic religion flourishes there, are not known with precision. According to the report of 1756, which is the last on this subject that the Vicar-Apostolic of London sent to the Congregation of the Propaganda, there were in Maryland ten thousand Catholic communicants, assisted by twelve priests of the suppressed Society of Jesus; in Pennsylvania, five thousand, who, also, were under the care of Jesuit missionaries, of whom there were four; in Virginia, New York, and Jersey, there were only Catholics scattered here and there about the country, and the Vicar was not informed whether they had priests to administer the sacraments to them, or whether the practice of their religion was tolerated. Now, as the approaching declaration of the independence of all these provinces will destroy the bonds of their political and civil subordination to the British government, it will thereby destroy all bonds in religious matters, and therefore, the Vicar-Apostolic of London will be deprived of the influence and direction that he has exercised, until now, in the religious affairs of those provinces. Under the present

circumstances, therefore, the effort of the Apostolic Nuncio to the court of France should be to effectively engage the zeal and piety of His Most Christian Majesty, to the end that, through the influence which he has with the leaders of the American Congress, he may be pleased to procure an article concerning the free exercise and the maintenance of the Catholic religion, in the solemn convention of peace, which is to be guaranteed by the public faith; all the more, since the Catholic religion may have made some progress in that country, on account of the stay of the French troops there. . . . On the other hand, if the opportunity should be found at the court of France for the insertion of an article directed toward the preservation of the public exercise of the Catholic religion in the republic of the United Provinces of America, the task then should be to seek the patronage of His Most Christian Majesty for concerting a plan of missions and missionaries for the service of Catholics living in that republic. As these have been subject, until now, to the Vicar-Apostolic of London, the most obvious and the most desirable plan would be to establish in one of the principal cities a Vicar-Apostolic, with episcopal character, chosen from among the subjects of the new republic, who should receive from the Holy See powers for the spiritual government of the Catholics of all those regions, and who, thereafter, should receive the charge of establishing various missionary stations, more or less numerous, according to the requirements of each province. A bishop Vicar-Apostolic is proposed, because he would be able to supply all needs, whether of the administration of the sacrament of confirmation, or of the ordination of clerics among the subjects of the new republic, and national jealousy would thus be obviated, by not constraining these new republicans to receive those sacraments from foreign bishops. But, if for other reasons the leaders of the American Congress should be loath to admit a bishop into their country, there might be substituted, instead, a general prefect of those missions, who, receiving the same title and powers of Vicar-Apostolic, could perform the episcopal functions in all, except in the administration of holy orders. If natives should be found available, they should always be preferred, whether for the vicariate-apostolic with episcopal character, or for the simple prefecture, as also, for the office of missionary; but, if available natives should not be found, there should be permission to appoint foreigners, always, however, from among the most impartial and acceptable to the government.[32]

The only solution of the problem was for the Church in the United States to have a semi-independent organization under Rome. Consequently, two meetings were held in Maryland in 1783 and one in 1784, at which duly chosen and accredited delegates of the clergy in Maryland and Pennsylvania met to effect the necessary organization. The Reverend John Carroll (1735–1815)[33]—later to play such an important part in firmly establishing his Church in the United States—was present; and Father John Lewis (1721–88), who had been Bishop Challoner's vicar general in the American colonies during the Revolution, was nominated to Rome to be constituted superior, with the request that he be given power to administer confirmation, and that he be granted certain other privileges

not of a strictly episcopal character.[34] At the last of the meetings mentioned the following resolution was adopted:

It is the opinion of a majority of the chapter that a superior *"in spiritualibus,"* with powers to give Confirmation, grant faculties, dispensations, bless oils, etc., is adequate to the present exigencies of religion in this country. Resolved therefore,

1st, That a bishop is at present unnecessary.

2nd, That if one is sent it is decided by the majority of the chapter that he shall not be entitled to any support from the present estates of the clergy.

3rd, That a committee of three be appointed to prepare and give an answer to Rome conformable to the above resolution.[35]

This memorial of the Maryland clergy to Pope Pius VI was referred by him to the Congregation of the Propaganda, which evidently considered Father Lewis too old, and proposed to the pope the name of the Reverend John Carroll[36] in his place as "Superior of the Mission in the thirteen United States of North America" with power to administer the rite of confirmation. Undoubtedly Carroll's selection was due both to his eminent qualifications and to Benjamin Franklin's known hope that he might be chosen. The nomination was confirmed June 9, 1784.

The early part of the cardinal prefect's letter to Father Carroll notifying him of his appointment deserves publication as the first official document of its character regarding the Roman Catholic Church in the United States:

In order to preserve and defend Catholicity in the Thirteen United States of North America, the Supreme Pontiff of the Church, Pius VI, and this Sacred Congregation have thought it extremely proper to designate a pastor who should, permanently and independently of any ecclesiastical power, except the same Sacred Congregation, attend to the spiritual necessities of the Catholic flock. In the appointment of such a pastor, the Sacred Congregation would have readily cast its eyes on the Rev. John Lewis if his advanced age and the labors he has already undergone in the vineyard of the Lord had not deterred it from imposing on him a new and very heavy burden; for he seems to require repose rather than arduous labor. As then, Rev. Sir, you have given conspicuous proofs of piety and zeal, and it is known that your appointment will please and gratify many members of that republic, and especially Mr. Franklin, the eminent individual who represents the same republic at the court of the Most Christian King, the Sacred Congregation, with the approbation of His Holiness, has appointed you Superior of the Mission in the thirteen United States of North America, and has communicated to you the faculties, which are necessary to the discharge of that office; faculties which are also communicated to the other priests of the same States, except the administration of Confirmation, which is reserved for you alone, as the enclosed documents will show. . . .[37]

Franklin's *Private Journal* under date of July 1st of the same year refers to this event. He says:

> The Pope's Nuncio called, and acquainted me that the Pope had, on my recommendation, appointed Mr. John Carroll superior of the Catholic clergy in America, with many of the powers of a bishop; and that probably he would be made a bishop *in partibus* before the end of the year. He asked me which would be more convenient for him, to come to France, or go to St. Domingo, for ordination by another bishop, which was necessary. I mentioned Quebec as more convenient than either. He asked whether, as that was an English province, our government might not take offence at his going thither? I thought not, unless the ordination by that bishop should give him some authority over our bishop. . . .[38]

Carroll's appointment was an extraordinarily fortunate one, both from the standpoint of the Church and of the new State. A devoted Catholic, and an ardent patriot, respected and trusted by Washington, he was ideally fitted for his very difficult and delicate task of organizing the churches of the Roman communion in the United States. He had been also, as a representative of the Catholic Church, able to exert considerable influence in France in favor of aid during the Revolutionary War. But the great thing about Carroll was his noble Christian character and his breadth of view, which made him honored by all who knew him. Because of these characteristics I have chosen him as one of those to whom we are most indebted for our religious freedom in this country, and described in some detail his generous attitude toward the State and different religious bodies.[39]

Ten days after Carroll's official notification was sent to him, on June 19, 1784, the vicar apostolic of London was notified of this step, and "by that official act was terminated the jurisdiction of the English over the American Church."[40] This action was momentous. The official document notifying the new prefect apostolic was not received by him until November 26 of the same year. By this action the American Church was given a quasi-independent position, being subject only to Rome and without any connection with Great Britain. Carroll accepted, though fully realizing the difficulties facing him in the new republic because of the close connection of his Church with the Congregation of the Propaganda in Rome. In his letter of acceptance he stated that:

> In most places Catholics are not admitted to any office in the State unless they renounce all foreign jurisdiction, civil or ecclesiastical. . . . The Catholic body [however] think that some favor should be granted to them by the Holy Father, necessary for their permanent enjoyment of the civil rights they now enjoy. . . . [Because of] the jealousy of our government towards all jurisdiction of a foreign kind . . . we hope that some plan may be adopted by which hereafter an ecclesiastical superior may be appointed for this country, in such a way as to retain absolutely the spiritual jurisdic-

tion of the holy see, and at the same time remove all ground of objecting to us, as though we held anything hostile to the national independence. . . . I know with certainty that this fear will increase if they know that an ecclesiastical superior is so appointed as to be removable from office at the pleasure of the Sacred Congregation de Propaganda Fide, or any other tribunal out of the country, or that he has no power to admit any priest to exercise the sacred functions, unless that Congregation has approved and sent him to us.[41]

The new superior took up his work vigorously, and proved that he was the wisest possible choice. He informed the Propaganda that the Catholic population of the colonies was about 24,500, to which it was reported by the French Chargé d'Affaires that 14,500 should be added for Illinois and the region to the South.[42]

Some twenty-two secular clergy of the Church had met in the fall of 1784 after they had heard of Carroll's appointment as superior to advise the pope that this was sufficient. They told him that there was "not the least necessity" for going further and naming a bishop. Their opposition was based on several grounds, of which the first—and evidently in their eyes the most important—was that "The majority of the Protestant population here are averse to a Roman Catholic prelate and for this reason the episcopal office if introduced would most likely awaken their jealousy against us."[43] It was fortunate for the Church that its first representative head in the United States should have been not only a man of the highest Christian character and exalted patriotism, as was known at the time of his appointment as superior; but that he should show evidence in this position of leadership of a liberal attitude toward the problem facing his co-religionists in the United States. The situation was in many respects difficult and delicate. There were many racial groups of Catholics to harmonize; especially the Irish in the towns, the French (including the seven thousand Acadians who had been ejected from the present Nova Scotia from 1755 to 1766 and were scattered from Maine to Louisiana), the Germans in Pennsylvania, and the English in Maryland. There were the distance from Rome and the complications due to slow communication. But the most serious problem was caused by the anti-Catholic tradition in the colonies,[44] and the adjustment of a highly centralized and authoritarian church organization to the government of a republic with entire Church–State separation. A letter written by the French Chargé d'Affaires in the United States to the Prime Minister of France, under date of March 27, 1785, brings out the difficulty of the situation:

. . . The articles of the confederation do not permit any one of the officers of the United States to receive gifts, titles, or employments of any kind whatever from a king, prince, or foreign power. Republican jealousy would infallibly apply this prohibition to ecclesiastical offices; and without particular address in the management of this affair,

religion would lose more than it would gain by the nomination of a bishop. Thus the holy see is sure to extend its progress in relaxing its jurisdiction as much as the good of the faith can permit; and a different practice would not fail to stop its own propagation and to augment the other sects on which the civil honors and authorities will [would] devolve to the exclusion of the Catholics. . . .[45]

Carroll in his "letter of acceptance" referred to this same matter of the possible effect of the sixth article of the Confederation on his accepting a high office from Rome.[46] Similarly, at about the same time he wrote to Father Thorpe,

You well know, that in our free and jealous government, where Catholics are admitted into all public councils equally with the professors of any other Religion, it will never be suffered that their Ecclesiastical Superior (be he a Bishop or Prefect-Apostolic), receive his appointment from a foreign State, and only hold it at the discretion of a foreign tribunal or congregation. . . .[47]

These are examples, which might be multiplied, of Carroll's desire to conciliate American sentiment as far as this was compatible with loyalty to the Church.[48]

At this time, as Carroll himself pointed out, it was only in Pennsylvania, Delaware, Maryland, and Virginia that Catholics enjoyed "equal advantages with their fellow-citizens."[49] They were "tolerated" everywhere, but minor disabilities were still found in various places, and one or two states continued, under the letter of the law, to ban them from public office. The last state to remove that ban was North Carolina, in 1835.

But the Church under Carroll was soon acclimated to American conditions. This was shown in 1786, when in connection with the dedication of St. Peter's—the first Roman Catholic Church to be erected in New York City—the president, along with members of his cabinet and members of Congress, attended a dinner in celebration of the event.[50]

A letter from the French minister to the United States, M. Otto, to the French Minister of Foreign Affairs, the Comte de Vergennes, shows clearly the status of Church-State relations in this country as they appeared to an intelligent Roman Catholic observer at about this time. It is dated New York, January 2, 1786.

All Christian sects enjoy in America an entire liberty. The Jews have the exercise of their religion only; but they make efforts to enter into the legislative assemblies. It would be very remarkable if this people, after having suffered the contempt of all ages and nations, should succeed in America in taking part in the affairs of government. But this revolution is not yet ripe; and although, according to the terms of several of the constitutions, it is enough to recognise a God to enter the assembly, prejudices are still too strong to enable the Jews to enjoy the privileges accorded to all their fellow-citizens. But whatever may be the tolerance of the different states in the

United States, religious zeal awakens so soon as one sect dares to take the lead over another. The Presbyterians of Pennsylvania and Massachusetts have not yet been reconciled to the Anglicans; and when a preacher announces some exaggerated pretensions, it is enough to inflame the opposite party. The small number of Catholics has not yet given umbrage; but it is believed here, as in England, that this religion is contrary to political liberty; and, if it is augmented by the aid of any foreign power, they will not fail to oppose its increase with vivacity. Moreover, we are essentially interested that there should not be in America a French church, since it would be one motive the more to excite the subjects of his Majesty to emigrate. Mr. de la Valinière assembles the French who are in his house. He preaches regularly to them every Sunday, and he assured me that he is persuaded that, if there were a French church here, it would, without doubt, attract a great number of his countrymen.[51]

The year following Carroll's appointment as superior he was made prefect apostolic; and the final act necessary to place the Church on a firm basis in the United States was his election to the bishopric. This was effected July 12, 1788, by the nomination by twenty-four of the twenty-six priests assembled and entitled to present a name to the pope from America. The bull confirming his election was issued the next year, and Carroll was consecrated in England in the summer of 1790 by the senior vicar apostolic. The Roman Catholic Church was now able to undertake its work in the new republic under favorable auspices and theoretically on a basis of legal equality with all other religious bodies. This was a condition which had not existed anywhere for more than a thousand years, since the Church here was not a State-Church, nor a merely tolerated Church, nor a persecuted Church. It was, from the standpoint of the State, merely one of a large number of religious bodies treated with impartiality by the Federal government and soon to receive equal treatment in all the states.

Between Bishop Carroll's nomination to the episcopate and his consecration an event of some national significance occurred in which he played the leading part. The address of the Roman Catholics to Washington in December, 1789, was signed by him on behalf of the clergy, and by four representatives of the laity: Charles Carroll of Carrollton (1737–1832), Daniel Carroll (1730–96), the brother of the newly elected bishop; and Dominick Lynch (1754–1825) and Thomas Fitzsimmons (1741–1811), the leading Catholic laymen of New York and Philadelphia, respectively. The prominent part taken by the laity was both notable and encouraging. The address follows:

We have been long impatient to testify our joy, and unbounded confidence on your being called, by an Unanimous Vote, to the first station of a country, in which that unanimity could not have been obtained, without the previous merit of unexampled services, of eminent wisdom, and unblemished virtue. Our congratulations have not reached you sooner, because our scattered situation prevented our communication, and

the collecting of those sentiments, which warmed every breath. But the delay has furnished us with the opportunity, not merely of presaging the happiness to be expected under your Administration, but of bearing testimony to that which we experience already. It is your peculiar talent, in war and in peace, to afford security to those who commit their protection into your hands. In war you shield them from the ravages of armed hostility; in peace, you establish public tranquillity, by the justice and moderation, not less than by the vigour, of your government. By example, as well as by vigilance, you extend the influence of laws on the manners of our fellow-citizens. You encourage respect for religion; and inculcate, by words and actions, that principle, on which the welfare of nations so much depends, that a superintending providence governs the events of the works, and watches over the conduct of men. Your exalted maxims, and unwearied attention to the moral and physical improvement of our country, have produced already the happiest effects. Under your administration, America is animated with zeal for the attainment and encouragement of useful literature. She improves her agriculture; extends her commerce; and acquires with foreign nations a dignity unknown to her before. From these events, in which none can feel a warmer interest than ourselves, we derive additional pleasure, by recollecting that you, Sir, have been the principal instrument to effect so rapid a change in our political situation. This prospect of national prosperity is peculiarly pleasing to us, on another account; because, whilst our country preserves her freedom and independence, we shall have a well founded title to claim from her justice, the equal rights of citizenship, as the price of our blood spilt under your eyes, and of our common exertions for her defence, under your auspicious conduct—rights rendered more dear to us by the remembrance of former hardships. When we pray for the preservation of them, where they have been granted—and expect the full extension of them from the justice of those States, which still restrict them: when we solicit the protection of Heaven over our common country, we neither omit, nor can omit recommending your preservation to the singular care of Divine Providence; because we conceive that no human means are so available to promote the welfare of the United States, as the prolongation of your health and life, in which are included the energy of your example, the wisdom of your counsels, and the persuasive eloquence of your virtues.[52]

Washington, in reply, said:

While I now receive with much satisfaction your congratulations on my being called by a unanimous vote to the first station in my country, I cannot but duly notice your politeness in offering an apology for the unavoidable delay. As that delay has given you an opportunity of realizing, instead of anticipating, the benefits of the general government, you will do me the justice to believe, that your testimony to the increase of the public prosperity enhances the pleasure, which I should otherwise have experienced from your affectionate address.

I feel, that my conduct in war and in peace has met with more general approbation, than could reasonably have been expected; and I find myself disposed to consider that

fortunate circumstance, in a great degree, resulting from the able support and extraordinary candor of my fellow citizens of all denominations.

The prospect of national prosperity now before us is truly animating, and ought to excite the exertions of all good men to establish and secure the happiness of their country, in the permanent duration of its freedom and independence. America, under the smiles of divine Providence, the protection of a good government, the cultivation of manners, morals, and piety, can hardly fail of attaining an uncommon degree of eminence in literature, commerce, agriculture, improvements at home, and respectability abroad.

As mankind become more liberal, they will be more apt to allow, that all those, who conduct themselves as worthy members of the community, are equally entitled to the protection of civil government. I hope ever to see America among the foremost nations in examples of justice and liberality. And I presume, that your fellow-citizens will not forget the patriotic part, which you took in the accomplishment of their revolution and the establishment of their government, or the important assistance, which they received from a nation in which the Roman Catholic religion is professed.

I thank you, Gentlemen, for your kind concern for me. While my life and my health shall continue, in whatever situation I may be, it shall be my constant endeavour to justify the favorable sentiments you are pleased to express of my conduct. And may the members of your society in America, animated alone by the pure spirit of Christianity, and still conducting themselves as the faithful subjects of our free government, enjoy every temporal and spiritual felicity.[53]

This correspondence breathes a new spirit of toleration on both sides. It would scarcely have been possible in colonial days.

Some idea of the effect of the more tolerant spirit toward Roman Catholics which came with independence and the formation of the new government may be gained by considering the situation in Boston, the headquarters of American Puritanism. During the colonial period there was no Roman Catholic parish in New England, and in Massachusetts none would have been allowed. But on All Saints' Day, 1788, a French priest celebrated mass in the old French Huguenot Church at what is now 18 School Street. This is considered "the first Catholic Church in New England." The mass did not have to be celebrated secretly, but was duly described in the press.[54] In 1790 the church secured as its pastor the Reverend John Thayer (1758–1815), a convert from Congregationalism and a chaplain during the Revolution. He is said to have been the first member "of a genuine New England family" to enter the priesthood, but he was too severe to be a successful administrator, so the French seceded from the Irish group and established a second church. To restore unity Bishop Carroll visited Boston in 1791. He was received with every mark of respect. Governor Hancock attended mass celebrated by him, and he was the guest of honor at

the annual dinner of the Ancient and Honorable Artillery Company. In 1799 subscriptions were opened for a new church, as the old one on School Street was no longer fit for divine service. Representative Protestants, headed by President John Adams, subscribed $11,000—about a third of the total. Charles Bulfinch, the leading American architect and a Protestant, provided the plans without charge. The church was dedicated in 1803; and the Roman Catholics, having persuaded most of Boston's representative citizens that they were doing highly useful work and were loyal to the government of the United States, were now in a position to serve recent immigrants and others appealed to by their polity and form of worship.[55]

When the Constitutional Convention which framed our American form of government met in 1787 it is believed that the number of Roman Catholics in the United States had not advanced to over thirty-five thousand, and that perhaps a sixth of these were of French origin; but thirty years later Ambrose Maréchal (1764–1828), third Archbishop of Baltimore, claimed a hundred thousand.[56] It was largely fear of Catholic growth which resulted, during the administration (1797–1801) of the Federalist president, John Adams, in the enactment of the Alien and Sedition Laws, which gave the president authority to expel from the United States aliens suspected of disaffection, and the Naturalization Act of 1798, which required residence of fourteen years in this country to obtain citizenship.

The extremes of those advocating a "Native American"[57] policy were largely responsible for the overthrow of the Federalists in 1800, when John Adams was defeated by Thomas Jefferson, one of the Jeffersonian planks being "freedom of religion and opposition to all manoeuvres to bring about a legal ascendancy of one sect over another."[58] As the nineteenth century began, under the influence of the bills of rights and with a liberal in the presidency, anti-Catholic prejudice died down. State churches and discriminatory laws against Catholics were gradually dropped.

The patriotism, breadth, and character of Father Carroll,[59] as first bishop of the Roman Catholic Church in the United States, from 1789 on, probably did as much as anything else to create a more favorable public attitude during the first two decades of the new century. But religious peace was not to last long. The day of violent anti-Catholic demonstrations, absurd outbreaks of fanaticism against convents and nuns, publication of scandalous books by alleged ex-nuns and ex-priests, etc., was still ahead. This movement, which reached its climax in the 'thirties and 'forties, was led mostly by irresponsible persons, though occasionally men of character and standing, like Samuel F. B. Morse (1791–1872), took part. His work entitled *A Foreign Conspiracy against the Liberties of the*

United States (1835) was an important book in the controversy. He wrote or edited several other works of the same character.

It is all a sad story,[60] but it has undoubtedly resulted both in a degree of intelligent devotion on the part of American Roman Catholics, and of insistence upon high standards in the priesthood, which command general respect. Anti-Catholicism can be explained largely by the fact that, theoretically at least, democracy—such as we have in the United States, where the final appeal is to the vote of the people—is inconsistent with absolutism, and to many the power of the pope as final authority in the field of "morals" as well as of religion seemed to involve a possible basis of serious conflict between the two powers.

The old theory of St. Augustine (354–430), which the Church adopted, that there are two societies, one spiritual and supernatural—the City of God—the other temporal and natural—the State—and that both derive their power from God, has much to commend it, but it is exceedingly difficult to draw a sharp line between the two. In most cases—perhaps three-fourths—the division is clear, but in the remaining fourth it is not, and it is in this fourth that fear arises among non-Catholics. The trouble is aggravated by the fact that the constitution of the Church is based on an authoritarian central government, albeit that in some respects its life, its constituency, and the parish clergy are democratic in the best sense of the word; whereas the Constitution of the American State is republican, with checks and balances between the Federal government and the states, and among the legislative, executive, and judicial departments. In other words, there is a broad distribution of powers in our American democracy, whereas in the Roman Catholic Church final authority is in the hands of a pope elected by cardinals—mostly Italian—in whose choice the rank and file of people have no say. No one should quarrel with those who wish this form of government in the field of "religion"—and this is the choice of millions of intelligent people—but when the Church claims through the pope final authority also in "morals," in which the State is also vitally concerned, there is a basis for possible difficulty, because the word may be extended to include the broad field of social ethics with which the modern State is directly concerned. Although the vocal opponents of Roman Catholicism as a factor in American life are often very unfair, and frequently cannot give sound reasons for their attitude, their underlying fear is due to the fact that the Church does concentrate ultimate power in a single person, and he is always, although not necessarily, a "foreigner." They apply to the Church what Laski has applied to the body politic: the conviction that "There will never be liberty in any state where there is excessive concentration of power at the center."[61]

Section 3. THE PROVINCIAL AND PLENARY COUNCILS OF BALTIMORE[62]

Bishop Carroll's diocesan synod of 1791[63]—attended by the bishop and twenty-two priests—laid the foundations for a strong Roman Catholic Church in the United States. We are now to consider the first seven provincial councils of Baltimore which legislated for practically the whole Catholic population of the republic. These have added importance because their acts were approved by the first plenary council of 1852 and its successors. We shall deal only with those which have an important direct or indirect bearing on the subjects discussed in these volumes, Church–State relations and religious freedom.

The first provincial council of Baltimore was held in 1829, attended by one archbishop and four bishops. It enacted that:

None are to be married until they know the Christian doctrine. Slaves, however, need know only the principal truths if more cannot be acquired.

In mixed marriages the non-Catholic must promise to bring up the offspring as Catholics.

Vernacular hymns and prayers are encouraged at evening service.

The Douai English Version of the Bible is to be used.

The faithful are to be warned against improper theaters and dances and novels.

The control of Church property should be consigned to the bishop whenever possible so as to avoid the abuses of lay trustees, who are not allowed either to institute or dismiss a pastor.

Latin must be used in the sacraments and the burial service, but a ceremonial in English is to be drawn up.[64]

The council thought so highly of the acts of the synod of 1791 taken under Carroll's leadership that it voted to have them reprinted at the head of those it passed.

The second council was held in 1833, attended by one archbishop and nine bishops. Various American dioceses were set up. Indian missions were entrusted to the Jesuits.

The third council in 1837 brought together one archbishop and eight bishops. It was decreed that ecclesiastics should not bring ecclesiastical cases before civil tribunals but that ecclesiastical property was to be secured by the best means the civil law afforded.

The fourth council in 1840 issued decrees signed by one archbishop and twelve bishops. Temperance societies were recommended. Pastors were to see that children frequenting public schools did not use the Protestant version of the Bible, or sing sectarian hymns; and must use their influence against the intro-

duction of these practices into public schools. Bishops were to control ecclesiastical property.

In 1843 the fifth council was held, attended by one archbishop and sixteen bishops. It was decreed that laymen were not to deliver orations in the churches.

The sixth council in 1846 was attended by one archbishop and twenty-two bishops. "The Blessed Virgin Mary Conceived Without Sin" was chosen as the patron of the United States.

The seventh council in 1849 was attended by two archbishops and twenty-three bishops. Priests were forbidden to assist at the marriages of those who had already had a ceremony performed by a Protestant minister, or who intended to have such a ceremony. A national council was proposed to be held in Baltimore by apostolic authority.

These seven councils were practically, even though not formally, plenary councils of the Church in the United States. This is not true of later provincial councils.

The first plenary council of Baltimore was solemnly opened May 9, 1852; its sessions were attended by six archbishops and thirty-five bishops.

They professed their allegiance to the Pope, as the definitely constituted head of the Church, and declared their belief in the entire Catholic faith as explained by ecumenical councils and the constitutions of the Roman pontiffs.

They decreed that the enactments of the seven provincial councils of Baltimore were obligatory for all the dioceses of the United States. The bishops were exhorted to choose consultors from among their clergy and to ask their advice in the government of the diocese.

Bishops should appoint censors for books relating to religion.

Bishops were exhorted to have a Catholic school in every parish with teachers paid from the parochial funds.

Laymen were directed to take no part in the administration of church affairs without the consent of the bishop.

Bishops were to use their influence with the civil authorities to prevent anyone in the army or navy from being obliged to attend the religious service repugnant to his conscience.

These and other decrees were duly approved by the papacy, the cardinal prefect stating that the Holy See tolerated relaxations of the common law of the Church for grave reasons only, but that every effort was to be made to bring about the observance of the universal discipline.

The second plenary council was held in 1866; President Andrew Johnson was among the auditors at the last solemn session. The decrees were signed by seven archbishops and thirty-nine bishops, or their procurators, and two abbots.

The council devoted much attention to the "errors" of the time, such as Unitarian-

ism, Transcendentalism, Pantheism, spiritualism, indifferentism, etc. They warned against the teaching that one religion is as good as another provided one be honest and just to his neighbor. They provided for dicesan synods in which the bishop alone was to be legislator and judge. Methods for the nominations to the papacy for American sees were decided upon.

Much attention was given to the matter of preaching, and it was decreed that priests were not to mingle political and civil matters with religious doctrines in their sermons, or to attack public legislators. They were to avoid having recourse to civil tribunals as far as possible.

The decrees of the seven provincial councils of Baltimore against the abuses of lay trustees and the best method of securing church property by civil sanction were re-enacted.

Pastors were instructed to keep registers of baptisms, confirmations, marriages, and funerals, all except the last named to be in Latin.

Teachers belonging to religious congregations should be employed, as far as possible, in parochial schools, which should be erected in every parish. Catechism classes should be instituted in the churches for public school children.

The idea of a Catholic university in the United States was favored.

Evidence of the result of the Civil War is seen in the decree commending both secular and regular priests to further the conversion of Negroes.

The large emigration from southern and western Germany was responsible for the provision that in dioceses with many Germans, seminarians should learn enough Geman to hear confessions, this being in keeping with the Church's policy to care for immigrants in their own language, in addition to the Latin Mass, until they could be Americanized.

The third plenary council was held in 1884, being presided over by Archbishop Gibbons as apostolic delegate.

Much attention was given to the matter of filling vacant sees. It was decided that when a see becomes vacant the archbishop should call together the consultors and irremovable rectors of the diocese, and that they should choose three names to be forwarded to Rome as well as to the other bishops of the province. The latter were to discuss the candidates and if desired they could reject the names proposed by the clergy and substitute others, but they must give their reasons when sending their recommendations to Rome.

Diocesan consultors must be at least two in number, and should be four or six, the consultors being chosen by the bishop, half at his own option, and half by clerical nomination.

Detailed arrangements were made for so-called irremovable rectors, pastors who could not be removed except for a canonical cause and who were to be chosen by examination, the bishop being allowed to give a vacant, irremovable rectorship only to a candidate who has received the approving votes of the examiners.

Priests were not to bring an action against another cleric before a civil tribunal

about temporal matters without written permission from the bishop, and never regarding ecclesiastical affairs, which pertain only to the Church authorities.

Catholics who were married before a sectarian minister were excommunicated.

Detailed arrangements for the education of clerics were adopted, beginning with the preparatory seminaries, where the pupils were to be taught Christian doctrine, English, and at least one other language, and must learn to speak and write Latin; Greek, natural science, music, and the usual branches of profane learning being included in the curriculum. These seminaries were to be followed by the greater seminaries, with two years devoted to philosophical and four to theological courses. The Catholic university project was to be advanced entirely under the management of the episcopate, but some students should continue to be sent to Rome, Louvain, and Innsbruck.

Much attention was given to ways in which the parochial schools could be made more efficient, and it was stated that it was desirable that they should be free.

As to the control of Church property, it was decreed that the bishop is the guardian and supreme administrator of all diocesan property. Where lay trustees are necessary, only those members of the congregation have a voice who are twenty-one years of age, have fulfilled the "Paschal Precept" (*i.e.*, Easter Communion), have paid for a seat in the church during the past year, have sent their children to Catholic schools, and belong to no prohibited society. The pastor was to be ex officio president of the board.

This council adopted an important statement regarding the attitude of the Church toward the American government. It breathes the spirit of Cardinal Gibbons (1834–1921), in many ways the most influential member of the council, who frequently gave expression to the view that the American Constitution with the democratic provisions of its Bill of Rights was one to which devout Catholics could give loyal assent. The statement referred to has added weight because it was in a pastoral letter adopted at the close of the council.

> We think we can claim to be acquainted with the laws, institutions and spirit of the Catholic Church, and with the laws, institutions and spirit of our country; and we emphatically declare that there is no antagonism between them. . . . We believe that our country's heroes were the instruments of the God of Nations in establishing this home of freedom; to both the Almighty and to His instruments in the work we look with grateful reverence; and to maintain the inheritance of freedom which they have left us, should it ever—which God forbid—be imperiled, our Catholic citizens will be found to stand forward, as one man, ready to pledge anew "their lives, their fortunes and their sacred honor. . . ."[64]

The above quotations[65] from the acts of these councils should suffice to show the broad and statesmanlike way in which the Roman Catholic Church organized in the United States and undertook to make its contribution to national life. Church action on the specific problems of Church trusteeship and incorporation are dealt with more at length elsewhere.[66] The councils were held mostly in the period of large foreign immigration; and it would be difficult to overestimate

the constructive part the Church played at that time in meeting the needs of the immigrant and in helping him to make the necessary adjustments to American traditions and ideals.

Section 4. THE CONFLICTS BETWEEN THE ROMAN CATHOLIC CHURCH AND THE STATE

Introduction. There have been many cases of tension in America over the political status of Roman Catholics. These have been largely due to religious and racial prejudice, including under the latter the opposition of elements of the old Anglo-Saxon stock in the United States to immigrants from southern and southeastern Europe. The new immigrants who started to come in such large numbers in the second quarter of the nineteenth century were largely Roman Catholic, and there was fear in many groups that they would in time change the Protestant traditions and ideals of the country. There were also certain economic considerations that caused the established native-born group to fear that extensive immigration would be to their disadvantage. The opposition to Roman Catholics arose prior to that against Jews, because the large Roman Catholic immigration preceded the Jewish by a couple of generations.

It was a case where Roman Catholics were frequently opposed just because they were Roman Catholics, and Jesuits, as Jesuits—not merely certain individuals of these groups. It was this which made the movement against the "foreigner" so dangerous. The only possible Constitutional ground for the attacks would have been "treason" against the government; but fortunately the American Constitution has narrowly defined the word. It says that "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort."[67] It is safe to say that no case has arisen where this could be proved against any large group of Catholics as Catholics.

A good statement of this point was written by an American Protestant pastor some seventy years ago. Explaining the Church-State position in this country to the people of Germany, Dr. Joseph P. Thompson (1819-79) wrote:

> It would be contrary to the whole spirit of American institutions to proscribe Roman Catholics as a class, or their clergy, or any order within their church, simply upon suspicion of political intrigue; but if found guilty of conspiring against the government, either as individuals or as a society, they could be dealt with, not as Catholics, but as rebels or traitors.[68]

Furthermore, today the devotion of the American Church to the United States has been proved, and the old bugbear of divided loyalty seldom arises to afflict us as it afflicted our ancestors. The point has been made clear, as we

shall see in a later section,[69] that the State leaves to the individual conscience all matters of purely religious belief, and that if any citizen wishes to recognize the pope as his authoritative guide in matters of faith and religion he is entirely at liberty to do so. It has also become clear that in purely political issues the Roman Catholic is left free to make his decisions as an American citizen.[70] Indeed, many eminent canonists and other Roman Catholic authorities have taken the ground that should the papacy attempt to interfere in such matters it would be uncanonical and the loyal Catholic would not be required to follow. So as we proceed with our study it will be found that the points of tension have been increasingly narrowed to matters involving legislation in the field of morals. This constitutes the "twilight zone" of occasional friction. Marriage, divorce, education, birth control—these are fields where moral issues are involved and where the Church may find itself at variance with the State.[71] The pope's infallibility, as defined by the Vatican council of 1869–70, extends only to ex cathedra utterances regarding "a doctrine concerning faith or morals."[72] It is these last two words that have caused the chief difficulties in Church-State relations as far as Roman Catholics are concerned. Yet some such difficulty, though less, occurs also in the case of other religions, and in some Protestant denominations attempts have been made by Church legislation to determine political attitude and conduct.

The principal difference between the two cases is that the Protestant generally decides ethical questions individually, merely accepting the views of his Church as a general guide; whereas the Roman Catholic accepts the judgment of the pope when he speaks with the authority of the Church as to what constitutes right or wrong. John Locke (1632–1704), who more than anyone else gave the founders of our government the idea of separation of Church and State, clearly saw that this difficulty would arise, and it is one of the reasons for his antagonism to the papacy.

> A good life, [he said] in which consists not the least part of religion and true piety, concerns also the civil government; and in it lies the safety both of men's souls and of the commonwealth. Moral actions belong therefore to the jurisdiction both of the outward and inward court; both of the civil and domestic governor; I mean both of the magistrate and conscience. Here, therefore, is great danger, lest one of these jurisdictions intrench upon the other, and discord arise between the keeper of the public peace and the overseers of souls. But if what has been already said concerning the limits of both these governments be rightly considered, it will easily remove all difficulty in this matter.[73]

Let us turn now to some of the tensions which have arisen between the Roman Catholic Church, or some conscientious Roman Catholics on the one

hand, and the government of the United States, or one of its political subdivisions, on the other.

(1) BEGINNING OF TROUBLE UNDER THE REPUBLIC—THE TRUSTEESHIP CONTROVERSY

It was well known even in the early days of the republic that the historical theory of the Catholic Church was that as an organization it was essentially independent of the civil power, and was anxious to control its own policy in matters where the interests of the Church were thought to be at stake. So it had to fight hard for legal recognition, as the American legal theory inherited from England is that tenure of property requires the approval of civil authority and that every corporation is at least to some degree the creation of the civil law.[74] From the standpoint of canon law:

> The Church (*fabrica*) is a juridical person which owns all the temporalities that are required for divine worship. Consequently the real owner of the parish church is the parish itself. . . . Especially must the false notion be eliminated that the parishioners are *the* owners of the parish church. Such an idea may suit a Protestant community, but does not agree with the fundamental principles of the Catholic Church.[75]

A Catholic authority, Monsignor Peter Guilday (1864–1947) shows how the major difficulty came about in this country.

> . . . Practically speaking, all the dissensions which arose in the system during Dr. Carroll's episcopate (1790–1815) came from the presumption on the part of certain trustees in New York, Philadelphia, Baltimore, Norfolk and Charleston, S. C., that the trustees exercised the old *jus patronatus*. Patronage has also existed in the Church from time immemorial. It is a quasi-contract between the Church and a benefactor, whereby among other privileges the latter has the legally granted right of presenting the name of a suitable person to the vacant benefice or living. . . . In the old canon law patronage was acquired in any one of three ways—the *dos, aedificatio,* or *fundus*. By *fundus* is meant the land on which the church stands; by *aedificatio,* the building of the church itself; and by *dos,* the endowment for the upkeep of the church. . . .[76]

This theory had implications that involved difficulties and much ill feeling. The growing opposition by Protestants to transplanting Roman Catholicism to the United States without some modification of its policies took various forms, of which perhaps the most important at this time, next to fear of the papacy, was objection to the European system of exclusive ecclesiastical control of Church property. This seemed to be autocratic, and made many fear that the Church would prove an enemy to democratic institutions. Even many Catholic laymen did not wish exclusively ecclesiastical control of Church property, and advocated some form of trusteeship in which the congregation should be represented. This compromise was in accordance with the method generally pro-

vided in the various states following the lead of New York, which adopted a general incorporation act in 1784. This early caused difficulties in the most important Roman Catholic parish in the state, that of St. Peter's, New York City. "The Trustees of the Roman Catholic Church in the City of New York"—five Catholics—were duly incorporated under the law. But these men—all laymen —wanted as a priest one who was a good preacher, laying relatively little emphasis on his sacerdotal qualifications, and ignoring the priest whom the prefect apostolic, Father John Carroll (1735–1815), had given the faculty for the church. The trustees claimed the right

not only to choose such a parish priest as is agreeable to them, but (of) discharging him at pleasure, and that after such election, the bishop or other ecclesiastical superior cannot hinder from exercising the usual function.[77]

To this Father Carroll replied:

If ever the principles then laid down should become predominant, the unity and catholicity of our Church would be at an end; and it would be formed into distinct and independent societies, nearly in the same manner as the congregation Presbyterians of our neighboring New England States.[78]

Father Carroll, who had become Bishop Carroll in 1790, was faced with similar difficulties in Philadelphia. In 1797 he was forced to excommunicate a German priest for denying his jurisdiction and maintaining that "The power of ecclesiastical ministry and government is derived to pastors from the community or congregation of the people."[79] The bishop felt it necessary to take up this and a similar case with the cardinal prefect of the Propaganda. The seriousness of the situation is shown by his statement:

I solemnly aver that those who excite these troubles maintained in my presence by their lawyers in a public tribunal, and upheld with all their might, that all distinction between order and jurisdiction was arbitrary and fictitious; that all right to exercise ecclesiastical ministry was derived from the people; and that the Bishop had no power excepting to impose hands on the person whom the people presented as their chosen minister; or to inquire whether hands had been previously imposed on him. Then they deny that they are or ever have been subject to my episcopal authority; and when the words of the Pope's brief were shown them, in which all the faithful in the United States are subject to the Bishop, they impudently dared to assail the brief as imposing a yoke on them contrary to American laws. And yet these are the men who are now sending an agent to the Holy See to obtain what had never before been granted.[80]

The whole question from the historic Catholic standpoint was one of lay interference with ecclesiastical jurisdiction, based on a theory which the Church could not recognize that the right of patronage, *jus patronatus,* resided in the congregation as in most Protestant bodies.

The priests coming from abroad caused the bishop special difficulty. In one case a German Franciscan (Fromm) took possession of certain property of a Catholic priest in Pennsylvania, the priest having died before being able to carry out his plan to build a church upon it. Fromm defied the authority of Bishop Carroll, whereupon the case came before a Pennsylvania court, which in 1798 rendered a decision favorable to the bishop. The court said:

The Bishop of Baltimore has, and before, and at the time of Fromm's taking possession of this estate, had the sole episcopal authority over the Catholic Church of the United States. Every Catholic congregation within the United States is subject to his inspection; and without authority from him, no Catholic priest can exercise any pastoral functions over any congregation within the United States. . . .[81]

This was a valuable precedent but not always followed. Indeed, much difficulty was caused by this and scores of similar cases of "lay trusteeism" in the United States, which Bishop Carroll, with his American traditions, wanted to give a fair trial. The Church had been accustomed for centuries, in France and some other parts of Europe, to lay trustees administering church goods, generally with the pastor as a sort of ex officio chairman of the board, but not having legal title to church property or any control over the call and dismissal of priests and pastors. This was the so-called *fabrique* system, and it required an annual report of the trustees to the bishop or ordinary.

As New York was beginning to play a very large part in American Catholic affairs, let us return there to study developments. The incorporation act of 1784 was superseded in 1813 by a new act for the incorporation of religious societies. The relevant portion of this act reads:

That it shall be lawful for the male persons of full age, belonging to any other church, congregation, or religious society, |*than the Episcopal and Dutch Reformed*| now or hereafter to be established in this state, and not already incorporated, to assemble at the church meeting house, or other place where they statedly attend for divine worship, and, by plurality of voices to elect any number of discreet persons of their church, congregation or society, not less than three, nor exceeding nine in number, as trustees, to take the charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof; and that at such election every male person of full age, who has statedly worshipped with such church, congregation or society, and has formerly been considered as belonging thereto, shall be entitled to vote, and the said election shall be conducted as follows: the minister of such church, congregation or society, or in case of his death or absence, one of the elders or deacons, church wardens or vestrymen thereof, and for want of such officers, any other person being a member or a stated hearer in such church, congregation or society, shall publicly notify the congregation of the time when, and place where, the said election shall be held at least fifteen days before the day of election. . . . that on the said day of the election,

two of the elders or church wardens, and if there be no such officers, then two of the members of the said church, congregation or society, to be nominated by a majority of the members present, shall preside at such election. . . .

The powers of the trustees are thus defined:

That the trustees of every church, congregation or society, herein above mentioned, and their successors . . . are hereby authorized and empowered to take into their possession and custody all the temporalities belonging to such church, congregation or society, whether the same consist of real or personal estate, and whether the same shall have been given, granted or devised directly to such church congregation or society, or to any other person for their use . . . and such trustees shall also have power to make rules and orders for managing the temporal affairs of such church, congregation or society, and to dispose all monies belonging thereto, and to regulate and order the renting the pews in their churches and meeting houses, and the perquisites for the breaking of the ground in the cemetery or churchyards . . . and all other matters relating to the temporal concerns and revenues of such church. . . .[82]

This act was treated for years as incorporating the trustees and only the trustees. It was, however, not very clearly drawn, and some thought that it incorporated all the members of the church society. In the case of *Robertson* v. *Bullions*, 1854, "a church corporation was placed on an equality with other corporations by making all the members of the society corporators, while the trustees were reduced to the position of a mere board of directors."[83]

This act of 1813 was distasteful to the Roman Catholics, for, as was stated by the court in this case:

The whole act shows that it was the intention of the legislature to place the control of the temporal affairs of these societies in the hands of the majority of the corporators, independent of priest or bishop, presbytery, synod or other ecclesiastical judicatory. This is the inevitable effect of the provision giving to the majority, without regard to their religious sentiments, the right to elect trustees, and to fix the salary of the minister. The courts cannot disfranchise any corporator, who possesses the qualifications prescribed by the statute.[84]

The trusteeship difficulty was considerably complicated by the conflicts which arose between Irish and French, and German and English groups, and among other national divisions within the Church itself.

There was a particularly serious situation in Norfolk, Virginia, where, in the early days of the nineteenth century, owing to opposition to the old Episcopal establishment, there was no legislative provision for incorporation of religious societies. Church property was consequently held by incorporated trustees in fee simple, the conveyance being "for and in behalf of the Trustees of the Roman Catholic Society of the Borough of Norfolk."[85] A French priest sent to the parish

in the winter of 1815–16 had great difficulty, because, although duly appointed by the bishop, he was treated by the trustees as a hired servant. The bishop supported his objections to this attitude, authorizing him to abolish the trustees, and to choose personally from time to time certain members of the corporation whom he thought best fitted to help him manage the temporal affairs of the parish. The old trustees protested in a letter to Archbishop Leonard Neale (1746–1817), Carroll's successor. His reply was as follows:

In the Catholic Church none but Bishops have the power of appointing or removing subordinate pastors within their respective dioceses, and whatever goes to contradict that, goes to subvert episcopal authority, and to establish a system which must eventually deluge the public with confusion and disorder.

Hence I conclude, that the trustees and vestrymen in the Catholic congregations of this diocese should only be such as are appointed by the pastor to assist him in the administration of temporal concerns, not to suppose him amenable to their authority with degradation to his character as to their appointed pastor, who is solely amenable to his bishop.[86]

Archbishop Neale was succeeded by Archbishop Ambrose Maréchal (1764–1828). The difficulties among groups of various national origins as well as between rectors and trustees continued. On these matters the archbishop sent a report to Rome in 1818 in which we find this statement:

It is of the greatest importance that the Sacred Congregation should know their principal cause. Therefore it is to be noted: 1°. That the American people clings with the most ardent love to the civil liberty it enjoys. Again it is a primary [*palmare*] principle of civil liberty among them, that absolutely all magistrates, whether high or low, at stated times of the year, should be elected by popular vote. Likewise all sects of Protestants, who constitute the greater part of the people, are ruled by the same principles and accordingly elect or dismiss, at their pleasure, their pastors. Now the Catholics living in their society, are evidently exposed to the danger of admitting the same principles of ecclesiastical rule, and by the artifices of impious priests, who cater to their pride, are easily led to believe that they also have the right to elect and dismiss their pastors as they please. 2°. When Catholics in any part of my diocese are numerous enough to think that they can build a church, first each places a few coins in a common fund; and since it is extremely seldom sufficient, they select two or three men, whom they depute to collect alms through the villages and towns, both from their catholic and protestant fellow-citizens. And if, perchance, they once collect enough money, they buy a sufficient amount of land, upon which to build a church, and have a priest's house and cemetery. Now when they decide to buy this portion of ground, sometimes they confer the title of possession to the bishop, so that he is and is held by the civil tribunals to be, the true possessor of this ecclesiastical property; but it often happens, that they approach the legislators of a state and obtain from them the title of possession, on condition that it is transmitted to 4 or 5 catholic men, who are annually

elected by the whole congregation. In this case, these men are not merely the temporal administrators of the temporal goods of the church [Marguillies] as they are in Europe, but they have and are true possessors of all the temporal possessions of the church before the civil tribunals and can exercise with impunity the same authority over them as over their own houses and lands. Now, no schism whatever took place in churches, of which the bishop possesses the civil title; nay it is impossible that such should ever happen. . . .[87]

This shows the situation in the country so clearly that it should not be necessary to cite further cases from this period. They all went back for their major cause to the difficulty of reconciling the Catholic tradition of authority and the spirit of the Declaration of Independence, and to the fact that laymen in America had become accustomed to do their own thinking and to take part in the control of all their affairs.

The year 1822 was the turning point because of two important utterances. First, Pope Pius VII (1740–1823) addressed the bull *Non Sine Magno* to Bishop Maréchal and his suffragans. In this he said:

There is yet another thing which gives continuous cause for strife and contentions, not only at Philadelphia but also in several other of the United States; namely, the immoderate, and unrestrained right to which the trustees or administrators of the temporal goods of the church pretend, totally independent of the Bishops. That, unless it be limited by some restriction may be a continual source of abuses and discord. Therefore they must remember that the goods, which are offered for divine worship, and for the support of the church, and its ministers, fall under the power of the Church: Thus, since Bishops by divine ordination are those who are placed over the church, therefore they cannot be excluded from the care, disposal, and supervision of these goods. Therefore the Sacred Synod of Trent expressly ordered that the administrators of the Fabric of each church also of the Cathedral, and pious places whatsoever are bound each year to give an account of their administration to the ordinary, adding (Sess. 22, cap. 9, *de ref.*) that although according to the particular usages of some countries, the account of the administration was to be rendered to other persons, appointed for that purpose, nevertheless the Ordinary must be called in together with them. Whence, if the trustees were to adminster the temporal goods of the Church in conformity with the Bishop, all things would be done peacefully and orderly.—But that is an innovation, and totally unheard of in the Church, which we have heard has happened there, namely that trustees and laymen arrogated to themselves the right of establishing as pastors those devoid of legitimate faculties, nay often those under censure, as recently was the case with Hogan; and likewise removing them at will and bestowing the revenues on whom they please. And if these things have been performed as was announced to us, how could so great a subversion of laws, not only ecclesiastical but divine also, be borne with? For in that case the Church would be governed, not by Bishops but by laymen; the pastor would be made subject to the flock, and laymen

would strive to usurp that power which is given by God to the Bishops. But those who are desirous of remaining in the bosom of our Holy Mother the Church, and of providing for their eternal salvation, are bound religiously to observe the laws of the Universal Church, and as the civil authorities must be obeyed in those things which are temporal, so also, in those which are spiritual must the faithful comply with the laws of the Church, not confounding the spiritual with the temporal. In order then, to avoid the dissensions and disturbances which frequently arise from the unbounded power of trustees, we have provided, venerable brothers, that certain regulations and instructions concerning the choice and direction of trustees should be transmitted to you, to which, we are confident, the trustees will fully conform themselves.[88]

The pope closed by admonishing the faithful to show their pastors the honor and obedience that belonged to them, and to be subservient to them in all things.

This bull was followed by a letter from the Sacred Congregation giving specific rules to be followed:

In regard to churches, priests' houses, cemeteries, and any other annexes of churches which are already built, [read the letter from Rome] and for the administration of which, the congregation had from the beginning given such indefinite power to the trustees, that the Bishop himself and the Missionaries are excluded from their administration, the Sacred Congregation, having considered the laws and circumstances of these places, believes, that it would be too dangerous to depose the trustees from a possession in which they are placed by a species of civil contract. Wherefore, such being the case, there seem to be no other means except advice and pleadings. We therefore ask Your Grace, and the other Bishops, Your Suffragans, that when the Catholic congregation, by whom the trustees are annually elected, meets, the Bishops should place before them the very serious evils, disturbances, and scandals, which have so afflicted several churches, and which arise from no other cause than the unlimited authority of the trustees; that they should carefully exhort and beseech these Congregations, using gentle pleadings through the bowels of Our Lord Jesus Christ, that in order to restore tranquility, order and concord, they should be willing to restrict that unlimited authority of the trustees, and circumscribe it by fixed limits and rules, which as we learn, they can easily confirm by the civil authority itself. The congregations are therefore to be urged: 1°. To choose only men of proven piety as trustees. 2°. In the election, to lay down definite limits so that the trustees cannot in any way dismiss at their pleasure pastors approved by the Bishop, or exclude them from the church, or deny them the revenues which are necessary for their sustenance. 3°. That they should by no means admit priests deprived of faculties, and above all those under censure. 4°. That pastors should be entirely independent of the trustees in the exercise of their sacred functions. 5°. Finally, that the trustees should concur with the Bishop in everything pertaining to sacred things, and that the bishops should have at all times the power to keep the trustees within proper limits.

Coming now to churches which shall be built in future, the Sacred Congregation is confident that the faithful, led by the example of the evils which resulted from the

indefinite power of the trustees, would choose in building new churches, to make them, and all their appurtenances, entirely over to the bishops and their successors. As often as they do so, the bishops are to take care that in the civil contract the faithful explicitly declare that they make over these goods in trust only, and for the use of the church to be built, to the bishop of the place, by name; to such a clause and condition, we have been informed, the laws of the glorious American States are in no way opposed. But to avoid all danger and fraud, it will be necessary for the bishop to make two copies of his will, of which one is to be retained in his own possession, the other to be given to a man, above all exception for his piety and honesty, so that if it should perchance happen that the copy kept by the bishop should be lost or hidden, his heirs could not claim the goods of the church for themselves, since it would be clear from the other copy that the bishop possessed these goods merely as a fiduciary, and was merely their administrator.

But if the faithful prefer to commit such goods to the administration of laymen, then the prelate must take all care that the authority committed to the laymen should be so limited in a civil contract, that neither they, nor their successors should be able to abuse it to the detriment of the Church. The same limitations as for churches already built are to be laid down and to give them greater force, the document is to be signed by the congregation. It may perhaps happen, that the faithful seduced by various reasons, would prefer to give unlimited power to the trustees. Then the bishop shall do all in his power to recall the faithful from such a fatal counsel. But if they persevere in their obstinacy it will be lawful for the prelate to refuse to bless the new church, or to set over them a pastor, as despisers of ecclesiastical laws.[89]

The kernel of the dispute on the matter of lay trustees may be seen in the petition to the Pennsylvania legislature in 1823 by the Hoganites—the supporters of the Reverend William Hogan, pastor of St. Mary's Cathedral in Philadelphia, who had been elected by its lay trustees, and on this account the new bishop was attempting to remove him from his charge. The petition, which was a Roman Catholic one, although it received strong Protestant support, asked the legislature to pass a law requiring lay members of a congregation to choose their own pastors, and to forbid appointments by the hierarchy.[90] The legislature, in spite of the latter's opposition, passed the requested bill, but it was vetoed by the governor.

As a result of the difficulties in adjusting the lay trustee system to the Roman Catholic usage in places all the way from New York City to New Orleans, the American hierarchy was compelled to look upon it as impracticable and resolved to abandon it.[91]

In 1829 the question of the evil of lay domination was considered at a meeting of the American prelates with certain lay advisers. This meeting is known as the first provincial council of Baltimore. Among those present were Roger B. Taney, then Attorney General of Maryland and later Chief Justice of the

United States. The majority of the bishops at this conference expressed their opinion on the matters at issue thus:

Since lay Trustees have frequently abused the right given to them by the civil power, to the great detriment of religion, and not without scandal to the faithful, we most earnestly desire [*maxime optamus*] that no church shall be erected or consecrated in future unless it is assigned by a written document to the Bishop in whose diocese it is to be erected, for divine worship and the utility of the faithful, wherever that can be done; the privileges of Regulars are to remain intact according to the decrees of Canon Law and the Constitutions of the Roman Pontiffs. By this decree, however, we wish to make no innovation in the manner of action already followed by the Bishop of Charleston in his Diocese.

Since serious disturbances arose at different times in this Province, because laymen, especially Trustees, foolishly [*perperam*] assumed the right of patronage, and (what is still more amazing) the right of institution to Churches or Missions, so that they sought to elect pastors or missionaries for themselves, even against the will of the Bishop and to retain them in the pastoral office contrary to the Bishop's decision; or that they should reject those whom the Bishop had approved, or attempt to drive them away, either by preventing the exercise of their ministry, by taking away their means of support, or by any other means; whose efforts, for sinister reasons some priests are known at times to have favored. Adhering to the Apostolic Letters of Pius VII of happy memory, and Leo XII, and the replies of the Sacred Congregation, by this our Decree, we declare that such a right of appointing or dismissing pastors assumed by laymen is entirely repugnant to the doctrine and discipline of the Church; and we further declare that no right of patronage of any kind, which the Sacred Canons recognize, now belongs to any person, congregation of laymen, board of Trustees, or any other persons whatever in this province. We declare also the stipends, or subsidies of any kind which are accustomed to be given by the faithful, either for the seats they occupy in the churches, or the service which priests give to churches or missions, or as is acquired as a fund to build a Church, or that a church may be constructed (which subsidies are usually given once for all, without any certain *dos* being assigned to the church) give no right of Patronage, which is recognized by the Sacred Canons.[92]

There was no more vigorous opponent of the American lay trustee system than the Bishop of New York, John Hughes (1797–1864). In a pastoral letter in 1842 he showed his point of view clearly:

A system, growing, perhaps, out of the circumstances of the times, has prevailed in this country which is without a parallel in any other nation, or in the whole history of the Catholic Church. That system is, of leaving ecclesiastical property under the management of laymen, who are commonly designated "trustees." We do not disguise, that our conviction of this system is, that it is altogether injurious to religion, and not less injurious to the piety and religious character of those who, from time to time are called upon to execute its offices. . . .

Now, ecclesiastical property is that, and all that, which the faithful contribute from religious motives and for religious purposes. . . . According to the laws of the Church and the usage of all nations, such property, though it must be protected by human laws, as other material property, yet, being once brought into existence in the form, and for the uses of religion, is considered as if it were the property of God: which cannot be violated, alienated, or wastefully squandered, without (besides the ordinary injustice as if it were common property) the additional guilt of a kind of sacrilege. It is not considered, in the Canon Law, either the property of the bishop, or the property of his clergy, or the property of the people; but as the property of God—for the religious use of them all. . . .

From this you will easily understand, venerable brethren of the clergy, and beloved children of the laity, how great has been our departure from the holy and the wise provision of the Church, in relation to ecclesiastical property. Instead of taking those provisions for our model, we have imitated the secular or sectarian examples by which we are surrounded;—and that sacred property has been managed as if it were in a state over which our trustees could exercise absolute control, according to their judgment and will.[93]

And so an American type of *Kulturkampf* was under way—not concerned with theological dogma but with the question of control of ecclesiastical property. And much that was intemperate was unfortunately said on both sides.

Bishop Hughes appealed to the churches of his diocese to give up voluntarily their civil right to hold church property. As his legal position was at least questionable, though his request was complied with by all the churches except one in Buffalo, he had introduced into the legislature in 1852 a measure which would permit the holding of property by ecclesiastical authorities. Protestant opposition was so strong that the bill was defeated. The Church of St. Louis in Buffalo—which preferred the lay trustee plan, to which it was accustomed—found its trustees excommunicated by Hughes, now archbishop, since the church had defied the interdict of the new diocesan when he attempted to secure the surrender of the trustees. The latter petitioned the legislature that the old law of 1784 be rigidly enforced. The legislature replied by adopting in 1855 the Putnam Bill, designed to make the clerical holding of church property illegal. Fortunately the state officials did not try to enforce this law, and it was repealed in 1863. Nonenforcement also resulted in the case of similar bills passed by other legislatures, but the whole controversy created much ill feeling. This was increased by the Vatican sending to America a papal nuncio, Cardinal Bedini (1806–64), empowered to settle the most serious trustee conflicts in New York and Philadelphia. His visit resulted in mob riots; the burning of his effigy; attacks on churches and their priests; revival of the antinunnery campaign, especially in the South; violent utterances against the nuncio in the Senate of the United States, resulting in a request to the president that he submit to the Senate in-

formation regarding the cardinal's visit; a recrudescence of emotional, and often vulgar and ill-informed anti-Catholic literature; lurid attacks on the confessional as an alleged cause of immorality, and on the motives of the hierarchy; and the coming to the fore of dangerous anti-Catholic agitators.

We shall deal in a later section in more detail with the development and present status of trusteeship in New York state, which in this matter set certain precedents for the nation.[94]

(2) CONVENT PROBLEMS AND PROTESTANT PREJUDICE

The period after about 1825 was one in which religious prejudice played a large part in the American scene. It was due to many causes, of which perhaps the most important were the fear of injury to our democratic institutions as a result of the large Catholic immigration from Europe, and anxiety to influence the religious character of the expanding West. The newly established "religious press"—a term often inappropriate—was largely responsible for much misinformation and bitterness on both sides. It will be discussed at length later,[95] but brief reference to it here is necessary for an understanding of what follows in this section.

The rise of the Protestant religious press goes back to a Congregational minister in Boston, the Reverend Thomas Prince (1687–1758), the historian, who edited, from 1743 to 1745, *The Christian History*. The first denominational journal was the Methodist *Arminian Magazine* (1789–90). By 1827 there were thirty Protestant periodicals, all anti-Catholic in tone. The formation of the American Bible Society in 1816, which was undenominational but Protestant in its aims and support, and of the various national Protestant missionary and educational societies,[96] all meant that Protestantism was prepared to strengthen its position, and to oppose if need were what it considered "the enemy at the gates." On the other hand, the Roman Catholics, with their increasingly effective national organization and the founding of their first journal, the *United States Catholic Miscellany,* in 1822, were prepared to battle for what they believed to be their rights. The religious press became very bitter in the 'thirties; some of the newly established publications, such as *The Protestant* and *Priestcraft Unmasked*, going beyond all bounds of decency in their denunciations of Roman Catholicism. More encouraging was the appearance in 1831 of a publication entitled *The Defender of Our Religious Liberties and Rights*. Its prospectus announced its purpose "to expose and resist such measures, 'in either sect,' the design or tendency of which appears to be the union of spiritual and temporal power or sectarian ascendancy or aggrandizement."[97]

Monsignor Guilday, discussing from a Catholic standpoint the various movements against the "foreigner" in the years from 1829 to 1838, says that some

were distinctly political, others racial, "while others again, particularly those managed by Baptist and Presbyterian ministers of the Gospel, are admixtures of politics, racial feeling and religious belief."[98] To understand these movements we must remember that Protestant leaders, some of whom were careful students of European history, were genuinely fearful of the effect of Roman Catholicism on democracy.

The discussions proceeded apace, not only in the press but in the pulpit, and public forums were held in different parts of the country where such subjects were debated as "Is Popery Compatible with Civil Liberty?" The New York Protestant Association, established in 1831, was specially active in promoting these debates, some of which accomplished a useful purpose, though most were too extreme to be wholesome and helpful. At least two in this period attracted wide attention: those in 1833 between Archbishop John Hughes (1797–1864) and the Reverend Professor John Breckenridge (1797–1841) of the Princeton (Presbyterian) Seminary, and in 1837 between Bishop John Purcell (1800–83) and the Reverend Dr. Alexander Campbell (1788–1866), one of the founders in Cincinnati of the Disciples of Christ. The major problem was recognized as the same, namely, "Is the Roman Catholic religion, in any or all of its principles or doctrines, inimical to civil or religious liberty?" This point is clearly brought out by Monsignor Guilday in *The Life and Times of John England (1786–1842)*.[99]

We are not concerned here, however, with this controversy except as it bears on the major theme of these volumes—Church-State relations and religious freedom. The controversy, after several years of agitation, came to a head in Massachusetts in 1834, when a young girl who had been dismissed from a menial position in the Ursuline Convent in Charlestown began telling lurid tales of her convent life. These stirred up much public indignation; which was strengthened when reports were published in the Boston newspapers that a nun had mysteriously disappeared under suspicious circumstances from the same convent. The convent was attended by the daughters of some prominent Boston Unitarian families who were dissatisfied with the rigid religious teaching in the public schools. Later investigation showed that the woman in question, a Miss Harrison, had been temporarily mentally deranged; but the tinder had been set for an explosion of public anger. This was fanned by extreme anti-Catholic sermons by the Reverend Lyman Beecher (1775–1863) and other ministers who should have been wiser.

An agitation regarding the right of Roman Catholics to be buried in the town had recently caused some friction, which had not left the board of selectmen favorably disposed toward institutions connected with the Church. Bishop Benedict Fenwick (1782–1846) had purchased three acres on Bunker Hill to be

used as a cemetery for his coreligionists, and had applied to the selectmen for permission to bury two children there. They replied that the health regulations of the town, while permitting the burial of Protestants, did not permit that of any Roman Catholic! But the bishop buried the children there in spite of their refusal, and the selectmen brought suit against him. The litigation was then pending, and the town authorities were consequently not disposed to exert themselves unduly in behalf of Roman Catholics.[100]

The convent situation had however become so serious that the selectmen visited the convent on the morning of August 11 and prepared a report to the effect that Miss Harrison, who had returned, was "entirely satisfied with her present situation, it being that of her own choice; and that she has no desire or wish to alter it."[101] Unfortunately this report did not appear in the Boston papers until the following morning; then the convent was in flames. On the night of August 11 a mob of forty or fifty men, partly disguised, and bearing "No Popery" and "Down with the Cross" banners, approached the convent and demanded that they be shown the secreted nun, whom they believed to have been placed in some dungeon. They were told to return the next day when the children would not be disturbed. But they decided on action that night, and while fire companies stood helplessly by the mob's leaders broke into the convent and applied the torch. The building, from which the sixty pupils had been hurried to safety by a back door, became a smoldering ruin. The selectmen, who early in the evening had been notified of the threatened trouble that evening, took no preventive measures other than to have the town's one policeman on hand, believing that that would be sufficient to forestall any serious disturbance. The next evening another mob burned fences, trees, and everything else they could lay their hands on within the convent grounds. Only the presence of troops, who had been stationed to protect the house of one Edward Cutter, who had sheltered Miss Harrison during her derangement, prevented the burning of a nearby Catholic church.

The story has been told at some length because it was but the first of several similar instances and had serious aspects. Ministers and "religious" papers which had done much to create the violent anti-Catholic attitude represented the most extreme Protestant opinion; a Roman Catholic institution doing quietly a useful work, and a member of the hierarchy, represented in different ways the powers of the Church; while the selectmen and the police and fire departments and militia represented the State. Here were the seeds of a controversy which was to have its repercussions in legislative halls in many states.

The mob action was universally condemned. On the day after the fire there was a mass meeting of Protestants presided over by the mayor in Faneuil Hall.

It adopted resolutions denouncing the burning as "a base and cowardly act," and added:

That we, the Protestant citizens of Boston, do pledge ourselves individually and collectively to unite with our Catholic brethren in protecting their persons, their property and their civil and religious rights.[102]

An influential committee was thereupon appointed to try to bring to justice those responsible, and to consider raising a fund to reimburse the convent. A reward was offered for the conviction of the culprits.

Lyman Beecher, whose ardent and somewhat intolerant Protestant preaching had been unwittingly one of the prime factors in causing the extremes of anti-Catholic feeling resulting in the convent burning, also denounced the act. He said:

The late violence done to Catholic property at Charlestown is regarded with regret and abhorrence by Protestants and patriots throughout the land, though the excitement which produced it had no relation whatever to religious opinions, and no connection with any denomination of Christians.[103]

Even editors of the religious press which had been denouncing convents were repentant. But the trial of those responsible showed intense anti-Catholic feeling, with the usual efforts to prove the immorality of convent life. The attempt of the attorney general to have jurors questioned as to their prejudice against Roman Catholicism was not successful. After twenty hours' deliberation the jury delivered a verdict of acquittal. This was received with "thunderous applause." The state legislature soon became involved when Bishop Fenwick petitioned for funds to rebuild the convent. There was evidently a difficult question of Church-State relations involved, so the request was referred to a committee, which early in 1835 presented two reports. The majority recommended that the funds be granted, though denying the right of the Ursulines to reimbursement; the minority bitterly attacked Roman Catholicism and recommended no compensation. The majority report was defeated by an overwhelming majority—412 to 67. The character of the more extreme opposition may be seen in a quotation from the *American Protestant Vindicator* of January 21, 1835:

Any man who proposes, or who would vote for the measure, which would rob the treasury of the descendants of the Puritans to build Ursuline Nunneries after the model of the Ursuline Nunnery at Quebec, and as the headquarters of the Jesuit Fenwick and his 20,000 vilest Irishmen must be a raving lunatic.[104]

To appreciate the significance of this utterance as representative of public opinion we need to remember that the paper in which it appeared was adopted the

following year as the official organ of the national Protestant Reformation Society.

On March 16, 1839, the Massachusetts legislature passed an act making the community responsible for damages under circumstances such as that of the burning of the Ursuline Convent, but as the measure was not retroactive the Ursulines did not get any damages.[105] Later efforts in 1842 at repayment were equally unsuccessful. In 1846 an inadequate sum was voted and refused; and in 1853 and 1854 attempts to adjust matters on a fairer basis failed, so that particular issue was considered dead.[106]

(3) ORGANIZATION OF PAROCHIAL SCHOOLS IN PLACE OF PUBLIC SCHOOLS

It is now necessary for us to consider the development of the Roman Catholic parochial school system. Roman Catholics felt that they could not conscientiously subject their children to instruction conducted mainly by Protestant teachers, with a Protestant point of view, and with opening exercises of an undenominational religious character. They also felt that no secular public school could or would give adequate attention to religious teaching. This teaching is to the devout Roman Catholic basic—as it is to earnest Protestants. The former, however, also felt that Sunday instruction in church, voluntary Bible classes in religion, and home influences are not adequate to give a thorough grounding in religion, and that this must not only be taught by qualified Roman Catholics regularly in the school, but that it must permeate all teaching. The school must make God the center.

"If," says Monsignor Fulton Sheen (1895–) in one of his essays, "human dignity and liberty come from God, then it follows that loss of faith in Him, means loss of faith in those liberties which derive from Him."[107] Therefore, according to this author, the parochial school is doing highly important work for democracy; a contention which few would dispute even when opposing public financial support as likely to endanger our religious freedom.

Consequently, in starting the parochial school movement, Roman Catholics were sincerely interested in having all their children taught in school the Christian religion as the Church of Rome understood it; but since this proved impossible under the American view of the public school system, the logic of the situation seemed to them to demand the creation of their own schools. Some of the Protestant Churches, like the Presbyterians and Episcopalians, favored in some states the same idea, but it was only the Roman Catholics, and later the Lutherans, who carried it out on an extensive scale.

The first parochial school was that erected in 1782 by St. Mary's Church, Philadelphia, then the largest and richest Roman Catholic parish in what is now the United States. This is considered the "Mother School" of the parochial

school system in the English-speaking colonies and states.[108] But the idea was not carried out in many places for several decades. Indeed, the real development of the system on a national scale did not come until half a century later. It was first officially sanctioned in Baltimore in 1829, and was developed soon thereafter in New York and Massachusetts. It was an almost inevitable result of the enormous Roman Catholic immigration at that time.[109]

The problem developed in a particularly acute way in the Eastern states with the large influx of Irish Catholics after 1830, and especially after the potato famine in 1848; and the subsequent immigration from Germany. Some idea of the size of this influx can be gathered from the fact that over a million and a quarter Irish arrived during the decade 1845–1855.[110] This means that the Catholic population arriving from Ireland in one decade was sufficient to double the Catholic population of the United States.[111]

The German population also increased steadily in the three decades after 1820, and in 1851 it surpassed even that from Ireland, including a large percentage of Roman Catholics from the Rhine provinces. These two groups furnished most of the Catholic immigrants up to the time of the Civil War, and had a decisive effect on the development of the Roman Catholic Church and its educational program. Bishop John Hughes (1797–1864), who was chosen archbishop in 1850, a vigorous and somewhat extreme leader of the parochial school movement, went so far as to adopt the maxim "The school before the church," although a more general policy was that expressed in the words "The school alongside the church."[112] He felt that the teachings in the public schools might be adequate for Protestant children but not for Catholics.

> But even if the Douay Bible were to be substituted for the King James Version, the Bishop would have remained unsatisfied. He maintained that the Catholic creed had, in the nature of things, to be taught *in its entirety*, in order to be taught effectively.[113]

As a result, the Roman Catholics undertook to duplicate the common schools through their parochial system.

These Roman Catholic schools, which up to about 1840 had generally been developed under diocesan influence, added more during the period of immigration to the cause of Roman Catholic education than during all the previous decades. This was due more to the religious teaching communities or orders than to any other single factor. The first of these orders was that established by Mother Elizabeth Seton (1774–1821) in 1809 at Emmitsburg, Maryland. It was known as the Sisters of Charity. Indeed, it is to this and similar orders that the Church is mainly indebted for the success of the movement, as they provided an inexpensive, devoted, and fairly well-trained group of teachers. At the beginning of the period of the great immigration there were thirteen religious com-

munities in the United States engaged in parish school work, but as the immigration advanced toward the middle of the century some twenty-five additional ones were added, most of them branches of European orders.[114] All but six of this new group were sisterhoods. In this respect the parochial schools are like the public schools; most of the teachers are women.

As far back as 1829 the first provincial council of Baltimore adopted a canon to the effect that

> Since it is evident that very many of the young, the children of Catholic parents, especially the poor, have been exposed and are still exposed, in many places of this Province, to great danger of the loss of faith or the corruption of morals, on account of the lack of such teachers as could safely be entrusted with so great an office, we judge it absolutely necessary that schools should be established, in which the young may be taught the principles of faith and morality, while being instructed in letters.[115]

The second provincial council in 1833 went a little further by appointing a standing committee to supervise the preparation of textbooks for Catholic schools. At the fourth provincial council pastors were directed to prevent Catholic pupils in the public schools from being made to join in the use of the "Protestant Bible" and hymns and prayers.[116]

When we realize that the Roman Catholic immigrants were mostly of the less privileged portion of the population, and that many of them were day laborers earning only a dollar a day, the unselfishness of the Roman Catholics in developing this new system commands our admiration. By the year 1840 there were two hundred Catholic parish schools in the United States, many of them west of the Alleghenies.[117] Now there are about forty times as many—a really amazing growth in a century. The development and present status of these schools will be discussed at length later.[118]

The organization of parochial schools was stimulated by the anti-Catholic feeling, especially in the large Eastern centers of immigrant population where unfortunate incidents were common.

The Charlestown burning, and subsequent trial and legislative hearings, raised the "No-Popery" campaign to a national issue. Attacks on Catholic churches and other property became so common that armed guards were frequently posted to protect them. Insurance companies even refused to insure their buildings unless they were constructed of noninflammable materials. Anti-Catholic literature increased. Rebecca Reed's *Six Months in a Convent*, although itself rather colorless, formed the basis of national discussion, as it was her stories, exaggerated as they passed from mouth to mouth, that had led to the Charlestown attack. Other much more sensational "revelations" followed, by "ex-nuns," "ex-priests," and Protestant extremists. Of these the most famous was Maria

Monk's *Awful Disclosures of the Hotel Dieu Nunnery of Montreal,* published in 1836 and reprinted in large editions totalling 300,000 copies in a quarter of a century. It was a lurid, unreliable, and later discredited account of the alleged immoralities and cruelties of convent life by a miserable, unbalanced woman. She was later arrested for picking the pockets of her temporary companion in a New York house of ill fame, and died shortly afterward in prison. About the only redeeming feature from a Protestant standpoint in the episode of the *Awful Disclosures* is that its many exaggerations and lies were brought to the attention of the public by some fair-minded Protestant investigators of the convent and its life.[119]

In the same year the powerful "American Society to Promote the Principles of the Protestant Reformation," generally spoken of as the Protestant Reformation Society, was established to put on a more national basis the work of the old New York Protestant Association. Its work was both to "convert Papists to Christianity" and to carry on organized work through auxiliaries, lecturers, tracts, and the religious press against the Roman Catholic Church.

It became evident that Catholics must develop a vigorous campaign in behalf of the type of education they favored, and in support of their views of religion, if their Church was not to lose in the struggle. Bishop John Hughes (1797–1864) was to prove the most vigorous leader in this movement, and New York, where he became bishop in 1842 and archbishop in 1847, was to be the center of his activity. This was the period in which Emerson referred to the six American "superstitions of our age," of which the first named was "the fear of Catholicism."[120]

(4) ROMAN CATHOLIC IMMIGRATION AND THE "PROTESTANT BIBLE" IN SCHOOLS AS POLITICAL ISSUES

In the late 'thirties the anti-Catholic movement became more serious as the conviction spread that the foreign Catholic immigrants, arriving in larger and larger numbers, were in alliance with their Church to overthrow the government of the country. The pope, assisted by the Roman Catholic rulers of Europe, was seen as trying to capture the Mississippi Valley as the future headquarters of the Church! Two missionary societies—the "Society for the Propagation of the Faith," formed at Lyons, France, in 1822, and the "Leopold Association" of Austria-Hungary, formed in 1829—because of their active missionary interest in trying to convert the newly settled West to Catholicism and their large contributions to the cause, were specially feared. From the time of its organization until 1850 the Lyons group is reported to have sent about nine million francs to this country—a large sum for a century ago;[121] and as late as 1884 Cardinal Gibbons, writing in the name of the American hierarchy to the directors of the

society, attributed the "deep roots" and the rapid spread of Catholicism in the United States "mainly to the assistance rendered by your admirable Society. . . ."[122]

The fear of the political designs of the papacy was given a semblance of respectability by no less a person than Samuel F. B. Morse (1791–1872). In 1834, after an unfortunate experience in Rome, he wrote under the pen name of "Brutus" a series of articles in the Protestant *Observer* on "A Foreign Conspiracy against the Liberties of the United States," followed the next year by a similar series in the New York *Journal of Commerce* on "Imminent Dangers to the Free Institutions of the United States through Foreign Immigration." The main argument was that the purpose of the pope and of the societies named was not merely religious but political. The articles asserted that if the papacy and its great ally, Austria, were to survive they must have Catholic immigrants enter the country in sufficient numbers to strangle liberty and democracy, and to convert America to "Popery," thereby saving the decaying monarchies, and paving the way for the papacy and despotism in America! Referring to the Leopold Association in his "Foreign Conspiracy," Morse said:

> Is it credible that the manufacturers of chains for binding liberty in Europe, have suddenly become benevolently concerned only for the *religious welfare* of this Republican people? If this Society be solely for the propagation of the Catholic faith, one would think that Rome, and not Vienna, should be its headquarters! that the Pope, not the Emperor of Austria, should be its grand patron![123]

In a word, the nefarious "plot" to conquer the United States must be killed. Roman Catholic schools and officers of government, and lenient immigration laws, must be discontinued, "Nativism" encouraged, and Protestants unite to conquer the West.

The Reverend Lyman Beecher (1775–1863) was another man of education and standing who was greatly stirred by what he believed to be papal plans to conquer and control the United States. He was specially fearful of the influence of Roman Catholic schools as proselyting agencies, and his *Plea for the West* (1832) popularized this issue and the method of avoiding the feared calamity, namely, Protestant schools and colleges. Congress was petitioned in 1838 by groups in Massachusetts and New York, who were alarmed. The latter group feared that there was

> a plan in operation, powerful and dangerous under the management of the Leopold Foundation, for the supervision of our civil and religious liberties, to be expected by the emigration of Roman Catholics from Europe, and by their admission to the right of suffrage with us in our political institutions.[124]

In 1842 Dr. Beecher addressed an eloquent appeal to the leader of the more

liberal group in American Presbyterians, Dr. Albert Barnes, on the need of the Protestant forces establishing themselves strongly in the West so as to prevent its control by the Roman Catholics. His letter began:

> The time has come in which we must unite our counsels and our forces for the West, as all we have done will be impotent to exert the controlling influence of Christian science, civilization, and holiness over the infinitude of depraved mind here bursting forth, and rolling in from abroad upon us like a flood.[125]

The "Nativistic" attitude had been growing so strong that it was inevitable that it should get actively into politics. It had a successful beginning in New York City in 1837, when the mayor and the entire common council were elected by the New York Native Americans. This and similar associations which opposed foreign officeholders and voters, as well as free immigration, were virtually aggressive Protestant groups convinced that unrestricted immigration and foreign influence were linked with Roman Catholicism. Other agencies, such as the American Bible Society, pledged themselves to labor until the Scriptures—that is, what the Catholics called the Protestant Bible—were read in every classroom in the country. The struggle over this issue became specially acute in New York City, where the public schools at the time were under the control of an association formed in 1805, which had as one of its stated purposes "to inculcate the sublime truths of religion and morality contained in the Holy Scriptures."[126] The Public School Society from 1813 on had its own funds supplemented by the allocation of part of the state's common school fund administered by the common council. By 1840 it had acquired a virtual monopoly of the school facilities of the city, operating nearly one hundred schools. The Roman Catholics had ground for complaint, since not only was the King James version of the Bible alone used, but some of the textbooks, especially those in history, were both unfair and disrespectful to their Church. Against this a strong protest was made both to the society and to the Board of Aldermen of the city. The controversy is illuminating as showing the conditions and views of leading Catholics and Protestants at the time, and throws much light on the reasons which led to the development of the parochial school system. It is described at some length in another place, where we take up the efforts made by the public schools, which had developed under Protestant influences, to eliminate historical references offensive to the growing Roman Catholic population.[127]

This situation attracted the attention of the governor of the state, the Honorable William H. Seward (1801–72), an Episcopalian, who in his message to the legislature in January, 1840, said that many immigrant children were being kept from these public schools because of the sectarian nature of the instruction.

Here he was on firm ground, but he went further, advocating in the interest of such children the "establishment of schools in which they may be instructed by teachers speaking the same language with themselves and professing the same faith."[128]

Quite naturally the few existing Catholic parochial schools petitioned the common council for a share of the state funds. This was unanimously denied—the council having evidently been impressed by the argument of the Public School Society that if the request were granted it would be followed by others from other religious groups, and that in the end sectarian instruction would displace general education in the schools of the city. This made the issue clear and brought to the fore Bishop John Hughes (1797–1864) as a vigorous advocate of the Catholic position. After much public discussion in which both sides went to extremes, the common council appointed a committee to reconsider the whole matter, and in the following year this committee's report, advocating the rejection of the Roman Catholic financial claims, was adopted by a vote of 15 to 1.[129]

Bishop Hughes replied by securing a petition to the state legislature prepared by a committee of citizens advocating—evidently as what he considered the lesser of two evils—a completely secular system of state-controlled education, so that New York City would not be at the mercy of the Public School Society. Governor Seward again entered the fray in behalf of his plan for state aid to sectarian schools, stating that some twenty thousand children in the city—mostly the children of immigrants—were being kept out of school by the type of Protestant instruction afforded. The legislature decided to ask the secretary of state, who also served as superintendent of state schools, to study the matter. He recommended that in place of the old society a responsible school commissioner should be elected in each ward. The matter became an important issue in the fall elections of 1841. The Whigs nominated a ticket pledged to support the existing system and opposed to sectarian schools; the Democrats officially tried to avoid the issue, although a majority of their candidates for the legislature took, as individuals, the same position. Bishop Hughes, fearing that the situation as it stood was hopeless, called a meeting four days before the election, and Catholics were urged to support a group of independent candidates whose names were submitted before the meeting adjourned. This action, whatever its intent, resulted in bringing the Church into politics and was resented. The day after this famous Carroll Hall meeting the Democratic candidates unanimously announced their opposition to any change in the public school system.[130] The votes showed Whigs, 15,980; Democrats, 15,690; Catholic party, 2,200; Nativistic party, 470. This indicated that the Roman Catholic group was in a hopelessly small minority, but that the Democrats could win if they adjusted their

policies to attract this group. As a result, the legislature, having a Democratic majority with the upstate vote, passed a bill which practically extended the state school system to New York City. But the state superintendent was a strong Protestant who favored the daily Bible reading, and as a result Bishop Hughes decided that the only way out was to build up the parochial school system. He was, however, able to secure some temporary relief through the action of the ward school commissioners, so that by 1844 the Bible reading practice had been given up in thirty-one schools in dominantly Catholic wards.[131]

Similar agitations took place in Philadelphia, Newark, Boston, and other cities, resulting in much bitter controversy on the Church–State issue. In some cases Roman Catholic children were expelled from school or otherwise punished for refusing to participate in the opening religious exercises. It should be remembered, however, that from their standpoint—or at least that of their parents—the Bible read in the schools (King James version) was a "sectarian" book, an opinion which Protestants denied.

While the New York controversy was at its height, anti-Catholic organizations were being strengthened all over the country, especially by the American Protestant Union, founded in 1841 and headed by Samuel F. B. Morse. It announced that it was opposed to the "subjugation of our country to the control of the Pope of Rome, and his adherents, and [was] for the preservation of our civil and religious institutions."[132]

The Presbyterian Church, though wording its actions more temperately than some groups, took the leading part in this agitation, especially urging the study of the Reformation. This attitude was not unnatural in view of its strong Scotch tradition. Methodists, Congregationalists, Baptists, and Lutherans joined in the cry. The Episcopal Church showed its opposition to Rome partly directly, but perhaps even more by opposing high "Oxford Movement" tendencies in its own midst. To unite Protestant efforts still further, another society, the American Protestant Association, was founded in 1843. It held that "Popery"—the common term then used by many of the opponents of Rome—was both in its "principles and tendencies, subversive to civil and religious liberty."[133]

The fear of the growing "foreign" Catholic influence was so great that in 1843 the American Republican party was formed. Their printed *Songster* of this year well shows their purpose and spirit. For instance:

> Then strike up "Hail Columbia!" boys, our free and happy land,
> We'll startle knavish partisans and break the Jesuit's band.
> We'll snap the reins, spurn party chains and priestly politics
> We swear it by our father's [*sic*] graves—our sires of Seventy six![134]

The party in its various utterances laid emphasis on extending the naturaliza-

tion laws so that a foreigner would have to reside in the United States twenty-one years before voting; continuing the Bible in the schools; restricting office-holding to native Americans; preventing all union between Church and State; and demanding the "right to worship the God of our fathers according to the dictates of our own consciences, without the restraints of a Romish priest, or the threats of a Hellish Inquisition."[135]

The following year (1844) this party made a deal with the Whigs, who were naturally inclined toward Nativism, to support Henry Clay and Theodore Frelinghuysen on the national ticket, in return for support of some local American Republican candidates in some places, especially New York and Pennsylvania. The Whigs lost the national election, but their new allies swept New York City and most of Philadelphia. This gave them encouragement to organize independently on a national scale, which they did July 4, 1845, changing the party name from Native Republican to Native American.

Among the early results of this movement were many discussions in Congress regarding the tightening of the naturalization laws. Petitions came in in large numbers from nativistic anti-Catholic sources,[136] but when the matter came before the House of Representatives in December, 1845, a few statements as to the "Papal plot" to subdue the country by sending over millions of immigrants from the despotic countries of Europe were so extreme as to create a revulsion. As a result, the agitation died down until renewed by the advocates of Know-Nothingism. The title of a book published in 1846 shows the spirit of this movement: *The Great American Battle; or The Contest between Christianity and Political Romanism.*[137]

Unfortunately it was a battle in more ways than one, as the Philadelphia riots of 1844 showed most disastrously. They went back to many causes, of which the most important was the liberal attitude of the school board in 1843, allowing children to read the Bible from their own version, as urged by Bishop Francis Patrick Kenrick (1796–1863). Unfortunately the American Protestant Association made this matter a vital issue. Mass meetings were held, conflicts between Irishmen and "Natives" occurred, Irish homes were destroyed, the Catholic churches of St. Michael and St. Augustine in the suburb of Kensington were burned, and mob rioting was so extensive that the bishop, to prevent further outrages, ordered all his churches in the city closed the following Sunday. Thereafter serious trouble disappeared for a couple of months, to be revived by the excitement of the celebration of July 4. The unwise action of the pastor of the Church of St. Philip Neri in another suburb, Southwark, caused riots in which several people were killed; the church was broken open, and only the presence of the militia, the mayor, and the governor, prevented its being burned.[138]

When rumors of the Philadelphia riots reached New York, Bishop Hughes advocated defense of the Catholic churches and took firm ground. "We might forbear from harming the intruder into *our house* until the last, but his *first* violence to our church should be promptly and decisively repelled."[139] The bishop put large groups of armed men around each church with instructions to keep the peace as long as possible, but if necessary to defend the churches at all costs. This firm stand and the co-operation of the authorities prevented serious trouble.

Various new societies now came to the fore interested not only in preventing the spread of Roman Catholicism in the United States, but in overcoming its abuses in southern Europe. In 1849 the leading societies of this character merged in the American and Foreign Christian Union. Its purpose, according to its constitution, was to "diffuse and promote the principles of Religious Liberty, and a pure and Evangelical Christianity, both at home and abroad, wherever a corrupted Christianity exists."[140]

The union, whose income rose to $80,000 in a few years, interested itself particularly in those converted Catholics who were believed to be suffering persecution and imprisonment for reading the Protestant Bible. Mass meetings petitioned the Federal government to intervene in their behalf. Even the legislature of New York passed strong resolutions expressing solicitude for "the recent persecutions to which Francisco Madiai and his wife, Rosa Madiai, have been subjected in the Kingdom of Tuscany, for the alleged crime of reading the Holy Scriptures." It further

> *Resolved,* that the President of the United States be respectfully requested to exert his best influences with the Government of Tuscany to obtain, as a favor, asked by a people which welcomes all strangers and protects all religions, permission for the Madiais and their fellow-prisoners for the same offence to emigrate to this country.[141]

The matter was discussed in the United States Senate, but no action was taken. This was followed by resolutions adopted at a mass meeting at the Broadway Tabernacle, New York, in 1854, and by the Methodist General Conference and the Old School Presbyterian General Assembly, demanding that the State Department negotiate treaties with foreign countries guaranteeing religious freedom. Senator Lewis Cass (1782–1866) secured the adoption of the resolutions without a roll call.[142]

But on the whole, the years immediately preceding 1850 witnessed a slight decline of anti-Catholic agitation of an extreme form; the Protestant societies devoted their attention more to religious education, to attempts at conversion, and to efforts to safeguard the freedom of Protestants. This was a period when

the antislavery agitation was uppermost in people's minds. But with the Compromise of 1850, which seemed to settle the most acute aspects of the slavery question for some time, the aggressive Protestant forces again took over. During this period the Roman Catholic Church made some blunders, due especially to the earnest but narrow loyalty of its ablest representative, Bishop Hughes of New York. For instance, speaking in St. Patrick's Cathedral on "The Decline of Protestantism and its Causes," he said:

> Everybody should know that we have for our mission to convert the world—including the inhabitants of the United States,—the people of the cities, and the people of the country, the officers of the navy and marines, commanders of the army, the Legislatures, the Senate, the Cabinet, the President, and all![143]

This was at least outspoken, but it seemed to many to be an unwise way of stating at that particular time and place the mission of the Church. Under the lead of the *Freeman's Journal*, the official organ of the bishop, and probably inspired by him, the Church went into action in a dozen states, petitioning the legislatures for a division of the public school fund and for laws against the required reading of the "Protestant Bible." In many instances Roman Catholic citizens threatened to defeat at the polls those who would not accept these and similar demands. The Protestants were equally active in lobbying, but against the Catholic demands, their principal agent being the American and Foreign Christian Union. This declared that the Bible would not be expelled from the classrooms of the public schools "so long as a piece of Plymouth Rock remains big enough to make a gun flint out of."[144] This was an extreme way of putting a still largely prevalent view. It may be expressed less objectionably by saying that if the majority of the people in any state showed through constitutional legislation their wish to continue to allow the Bible to be read without comment at the opening exercises of public schools methods would be found to carry out their wish in spite of opposition by minority groups. This view underlay the decision of the Supreme Court of Maine in 1854. The Maine court took the ground that the laws could not permit

> the right of sectarian interference in the selection of books. | The proposal | undermines the power of the state. . . . Thus the power of selection of books is withdrawn from those to whom the law entrusts it, and by the right of negation, is transferred to the scholars.[145]

This is the Ellsworth case, based on the withdrawal by a Catholic parent of his daughter from a public school rather than subject her to hearing the King James version read, and sending a bill to the state for services in teaching her at home. The Maine decision generally prevailed in state courts until 1890, when it was reversed by the well-known Edgerton Bible case.[146]

(5) NATIVISM AND KNOW-NOTHINGISM—THE AMERICAN PARTY

The so-called "Protestant Crusade"[147] of the middle of the last century, which resulted in the movement called "Know-Nothingism," is in some respects a very unlovely episode in American history. That it was conducted by men who honestly believed that the inroads of the papacy meant extreme danger to democracy in this country cannot be doubted. If it had contented itself with promoting religion in accordance with the best Protestant ideals and showing the need of the Roman Catholic Church to adapt itself more adequately to the American tradition of civil and religious liberty it would have been legitimate. But its unfair and malicious attacks on the Church of Rome, and the outrageous actions it encouraged or produced against innocent men, women, and institutions, provided a sad commentary on the religious freedom in whose name its bitter and often cruel campaign was carried on. Here we are concerned with the movement merely as a chapter in Church–State relations and in the denial of the freedoms of the bills of rights—both Federal and state.

The origins of "Nativism"—that is, the aggressive American Anglo-Saxon Protestant tradition—go back, as we have seen, to England and Puritan New England. They are rooted in the history of the struggle of the English nation with the Roman Church in the Reformation period. This developed the "No-Popery" slogan as a protection against the feared overthrow of the English form of civil government. The beginnings of the struggle in this country have been dealt with in earlier sections of this chapter. Now we are to deal with the serious events of the 1850's which led to the formation of the anti-Catholic "Know-Nothing" party. This was partly the cause and partly the result of a wave of nativistic hysteria which swept the country, and which had not been equalled since the days of the Alien and Sedition Laws of 1798.[148]

A striking evidence of the strong feeling was the furore occasioned in 1852 when the pope sent a block of marble to be placed in the Washington Monument at the Capital. Mass meetings of protest were held, and finally two years later a mob forced its way into the shed where it was stored, secured the block, and, carrying it away, threw it into the Potomac River![149]

The election in 1852 of President Pierce, a Democrat, who had the support of the Catholic and foreign-born elements, and his naming of a Catholic, James Campbell, as Postmaster General, and of several foreign-born Democrats to diplomatic posts, alarmed the Whigs and Nativists, and was to them clear evidence that the Roman Catholic Church was in politics. This was believed to be particularly true of the Irish, tens of thousands of whom migrated here after the potato blight of 1846–47, and became politically firmly entrenched and sometimes turbulent, especially in New England and New York. The Whigs

and Nativists were equally disturbed by the large immigration of a very different racial stock, the Germans, especially the radical element opposed to the Bible tradition, the Puritan Sabbath, organized Christianity, and conservative government. These migrated in large numbers to the Middle West after the German Revolution of 1848. As a result, there was a more determined war than ever against the immigrant and any form of European entanglement from 1850 to the close of 1854, when the effects of the Kansas–Nebraska Bill again put the slavery question in the center of the political stage. This agitation was so strong that even though Louis Kossuth (1802–94), the Protestant Hungarian patriot, who visited the United States, was at first received with acclaim, later, when it was realized that he had come to gain active support for his revolutionary cause, he was treated with coldness. This was due to the latent Nativism and isolationism, which specially feared the influences of southern and southeastern Europe.

But it was the Roman Catholic "foreigner" as the supposed emissary of the pope that chiefly roused the rabble. This resulted in the organization of the most famous of Nativist parties, the Know-Nothings. Article II of its constitution provided that

> The object of this organization shall be to resist the insidious policy of the Church of Rome, and other foreign influence against the institutions of our country by placing in all offices in the gift of the people, or by appointment, none but native-born Protestant citizens.[150]

It grew out of a "patriotic" society established in New York in 1849 known as the Order of the Star Spangled Banner. It had been prepared for during the preceding two decades by many similar organizations, such as the Native American Democratic Association and the Order of the Sons of America, whose followers virtually pooled their anti-Catholic and Nativistic interests in the new party. This is important of itself and because it was the forerunner of the American Protective Association, the A.P.A., formed in 1887 in Iowa, and of the Invisible Empire of the Knights of the Ku Klux Klan—the reincarnation of the Klan of 1866, established in Georgia in 1915—the most powerful anti-Catholic organization in American history. The Know-Nothings became a nationally organized secret political organization, employing ritual, high-sounding titles, pass words, initiation ceremonies, and grades or degrees of membership. No one was eligible unless he was born in the United States of Protestant parents and was not married to a Roman Catholic. Every candidate was required to answer a question which raised the Church-State issue in an acute form:

> Are you willing to use your influence and vote only for native-born American citizens for all offices of honor, trust or profit in the gift of the people, the exclusion of all

foreigners and Roman Catholics in particular, and without regard to party predilections?[151]

It is worth recording that the organization meeting of this new party took place in New York City and not in the deep South, which is generally associated with Nativist and anti-Catholic movements. As is well known, it secured its name from the common answer to questions from outsiders, namely, "I don't know." Tisdale's *Know-Nothing Almanac* stated its comprehensive purpose:

Anti-Romanism, Anti-Bedinism, Anti-Pope's Toeism, Anti-Nunneryism, Anti-Winking Virginism, Anti-Jesuitism, and Anti-the-Whole-Sacerdotal-Hierarchism with all its humbugging mummeries. Know-Nothingism is for light, liberty, education and absolute freedom of conscience, with a strong devotion to one's native soil.[152]

The significance of these slanders will be understood by all readers except perhaps the reference to Bedinism, which was so called because of the visit to America in 1853 of a papal legate, Archbishop Cajetan Bedini (1806–64). This was for the purpose of attending to certain property and other matters which concerned the Church. His visit was the occasion for many disturbances on the part of the Know-Nothings. The police had to be called out to protect him as a result of hostile disturbances in several places, especially Baltimore and Cincinnati. In Cincinnati an effigy of the nuncio was burned, and threats were made against Roman Catholic churches and clergy.

But Know-Nothing mobs were not confined to the route of his tour. Even in upper New England—too near Catholic Quebec for a feeling of security—there were serious disturbances. A priest was tarred and feathered in Maine, and in New Hampshire a mob tore down the American flag from the front of a priest's house and wrecked the inside of his chapel! In Brooklyn, New York, several thousand people escorted an anti-Catholic preacher through the streets. A free fight occurred between them and another mob—this time of Irish Catholics. In an election riot in Kentucky between the Know-Nothings and the Catholics twenty-two lives were lost and much property, in spite of police efforts.[153]

Fortunately, most responsible public men saw the grave evils and injustices of the agitation, and its entire incompatibility with American traditions and ideals of religious freedom. For instance, former President Tyler (1790–1862), writing to his son Robert on July 17, 1854, about the Know-Nothing party, said:

. . . The Catholics seem especially obnoxious to them, whereas that sect seems to me to have been particularly faithful to the Constitution of the country, while their priests have set an example of non-interference in politics which furnishes an example most worthy of imitation on the part of the clergy of the other sects at the North, who have not hesitated to rush into the arena and soil their garments with the dust of bitter strife. The intolerant spirit manifested against the Catholics, as exhibited in the burn-

ing of their churches, etc., will, as soon as the thing becomes fairly considered, arouse a strong feeling of dissatisfaction on the part of a large majority of the American people; for if there is one principle of higher import with them than any other, it is the principle of religious freedom. . . .[154]

A greater than Tyler, Abraham Lincoln (1809–65), writing from Springfield, Illinois, the following year (August 24, 1855) to his long-time friend, Joshua F. Speed of Kentucky, gave his opinion of this movement in no uncertain terms. The statement is important as showing his broad tolerance and his opposition to all forms of racial and religious bigotry.

. . . I am not a Know Nothing; that is certain. How could I be? How can any one who abhors the oppression of Negroes be in favor of degrading classes of white people? Our progress in degeneracy appears to me to be pretty rapid. As a nation we began by declaring that "all men are created equal." We now practically read it "all men are created equal, except Negroes." When the Know-Nothings get control, it will read "all men are created equal, except Negroes and foreigners and Catholics." When it comes to this, I shall prefer emigrating to some country where they make no pretense of loving liberty—to Russia, for instance, where despotism can be taken pure, and without the base alloy of hypocrisy.[155]

The official utterances of the Know-Nothings contained phrases about "civil and religious rights and privileges," but, as the questions it asked of candidates and its actions clearly showed, it was in reality a "No-Popery" political party and was closely related to the various organized nativistic groups. They were quite prepared to use force if necessary to accomplish their purposes.

Members of the Church of Rome were still considered "foreigners," partly because most of them at the time were of European birth, and even more because they owed allegiance to a foreign potentate—the pope. It is hard to put down this charge completely in the public mind, owing to the fact that many people will not discriminate between spiritual allegiance and political allegiance, a distinction which was ably made by Governor Alfred E. Smith (1873-1944) in his well-known article in the *Atlantic Monthly* at the time of his 1928 political campaign for the presidency.[156]

In 1854 the Know-Nothing party felt strong enough with its effective national and state organization to enter the political field actively. In the fall of that year it carried Massachusetts and Delaware, and—after a combination with the Whigs—Pennsylvania. In Massachusetts it elected the governor, all state officers, every member of the Senate, and all but two of the 378 members of the House![157]

When this "Know-Nothing Legislature"—which was the party's greatest political success—convened in the first week of 1855 an opposition newspaper suggested as a text for the customary election sermon the words from Job 8.9: "For

we are but of yesterday, and know nothing." It was noted that the number of ministerial members of the legislature was far larger than usual—twenty-four.[158] Laws were passed restricting officeholding to native-born citizens and requiring twenty-one years' residence for the voting privilege, but even these laws were allowed to stand for only a few years. They also required daily Bible reading in the schools "in the common English version," and appointed a "Nunnery Committee" to report on "such theological seminaries, boarding schools, academies, nunneries, convents, and other institutions of like character as they may deem necessary."[159] The committee's activities were scandalous, and, be it said to the credit of the legislature, it ended the commission's tour and expelled its chairman from membership in the House.

The next year Rhode Island, New Hampshire, Connecticut, Maryland, and Kentucky were also in the Know-Nothing or "American" column, and in many other states they elected some candidates or held the balance of power. Apparently a powerful new political party based largely on religious prejudice had come on the scene which might rival the old Whigs and Democrats and the newer Republicans, and even elect a president.

But in spite of these amazing successes, the party, when given power in various states, could not or did not carry out much of its program. In Connecticut its major achievement was passing a law requiring corporate rather than individual holding of church property and a literacy test for voters, this latter provision being also adopted in Massachusetts two years later. Even in Maryland, where anticovenant sentiment was particularly strong, there was no legislation on the subject. It was a case of the mountain laboring and bringing forth only a mouse. In Congress Know-Nothing representatives indulged in a good deal of "No-Popery" oratory in 1854–55. In 1855 they had forty-three members in the House, and five in the Senate, as well as some sympathy from an even larger number of Republicans who had been members of their secret "lodges."[160] But they accomplished almost nothing definite, though they created considerable interest in restricting immigration and extending the naturalization period.

In February, 1855, Congress experienced one good effect of their agitation, namely, a debate which attracted national attention, on the subject of secret political parties in a democracy. William H. Witte (1817–76) of Pennsylvania —let his name be remembered with honor—introduced the following resolution, which, though defeated, gained considerable support:

Resolved, that, in the opinion of this House, the existence of secret oath-bound political associations having in view an interference with the sanctity of the ballot box and the direction of the course of national and municipal legislation, is inconsistent

with, and dangerous to, the institutions of republicanism and directly hostile to the genius of this Government.[161]

Members of Congress grew restive as the debate of 1856 went on. Representative George Eustis (1828–72) of Louisiana was exasperated by the accusation that papal power was intrenched in the House itself. "Yes," he said, he favored the complete separation of Church and State.

But, sir, that very same reason which makes me a deadly enemy of Catholic interference with our institutions makes me blush for my countrymen when I see the Protestant church soiling its robes by dragging them into the mire of politics. (Cries of "Hear, hear" and "Good.") Your legislatures are filled with gentlemen who wear white cravats and black coats. ("Hear, hear" and laughter.) Your Congress has a large proportion of these clerical gentlemen. And I ask you with all due respect and all due courtesy to gentlemen of the cloth to show me a Catholic priest or an accredited agent of the Church of Rome in this Hall.[162]

As a result of failures in the field of constructive effort, of extreme attitudes and lawlessness, of the ridicule of the party's secrecy, of dissensions within, and especially of the return of slavery as the major political issue, the Know-Nothings did not survive in many places as an effective party after 1856,[163] and this in spite of the fact that at one time they claimed a million members.[164]

Section 5. THE COURT RECOGNITION OF THE SEAL OF THE CONFESSIONAL

A case was decided by the Court of General Sessions in the City of New York in 1813 that was of vital importance both to the Roman Catholic Church in the United States and to the cause of religious liberty. It had to do with the question whether a Roman Catholic priest is in any case compelled to disclose the secrets of auricular confession. It was particularly significant as being the first case tried in this country where this issue was at stake. Fortunately, under the circumstances, the court of four members was made up entirely of Protestants, and the two counsel who argued in behalf of the priest's right to maintain inviolate confessions made to him were Protestant lawyers of standing.

The case arose when the Reverend Anthony Kohlmann, S.J. (1771–1836), who was Rector of St. Peter's Church in New York, was summoned to appear at the police office because a man by the name of James Keating, who had had certain property stolen from him, informed the police that his stolen goods had been returned to him by Pastor Kohlmann. The rector was thereupon questioned as to the persons from whom he had received the goods, and had various other questions put to him, which he felt that he could not answer because he had secured the information through the confessional.

The case was sent to the grand jury, and the rector was subpoenaed to appear before it. He appeared, but in respectful terms again declined to answer. Bills of indictment were thereupon found against the two principals and against those who had received the stolen goods. These indictments were duly filed, and on March 5, 1813, the parties having pleaded not guilty, were put on trial. Again Father Kohlmann asked to be excused from making any statement regarding the restitution allegedly made through him and offered his reasons, which will appear at length later. Thereupon William Sampson (1764–1836) of the New York bar, as *amicus curiae*, stated that he had never heard of an instance in any country where a clergyman was called upon to reveal the inviolable secrets of sacramental confession, and it was decided to adjourn the trial until counsel could be heard in argument on the basic question involved.

On July 8 the court was held. It consisted of the Honorable De Witt Clinton (1769–1828), the mayor, who presided, the Honorable Josiah Ogden Hoffman, the recorder, who took his seat upon the bench, and two sitting aldermen. Father Kohlmann, being called and sworn, was duly examined by the district attorney, Barent Gardenier (d. 1822). He stated with restraint and firmness his reasons for declining to answer the question. He said in part:

> I must beg to be indulged in repeating to the Court the reasons which prevent me from giving any answer to the questions just proposed; trusting they are such as to prevail upon the Court to dispense with my appearing as an evidence in the present case.
>
> Were I summoned to give evidence as a private individual (in which capacity I declare most solemnly, I know nothing relatively to the case before the court) and to testify from those ordinary sources of information from which the witnesses present have derived theirs, I should not for a moment hesitate, and should even deem it a duty of conscience to declare whatever knowledge I might have; as, it cannot but be in the recollection of this same honorable Court, I did, not long since, on a different occasion, because my holy religion teaches and commands me to be subject to the higher powers in civil matters, and to respect and obey them. But if called upon to testify in quality of a minister of a sacrament, in which my God himself has enjoined on me a perpetual and inviolable secrecy, I must declare to this honorable Court, that I cannot, I must not answer any question that has a bearing upon the restitution in question; and that it would be my duty to prefer instantaneous death or any temporal misfortune, rather than disclose the name of the penitent in question. For, were I to act otherwise, I should become a traitor to my church, to my sacred ministry and to my God. In fine, I should render myself guilty of eternal damnation.
>
> Lest this open and free declaration of my religious principles should be construed into the slightest disrespect to this honorable Court, I must beg leave again to be indulged in stating as briefly as possible, the principles on which this line of conduct is founded. I shall do this with the greater confidence, as I am speaking before wise

and enlightened judges, who, I am satisfied, are not less acquainted with the leading doctrines of the Catholic Church, than with the spirit of our mild and liberal Constitution.

The question now before the Court is this: Whether a Roman Catholic Priest can in any case be justifiable in revealing the secrets of sacramental confession? I say, he cannot: the reason whereof must be obvious to every one acquainted with the tenets of the Catholic Church respecting the sacraments. For it is, and ever was a tenet of the Catholic Church, that Jesus Christ, the divine Founder of Christianity, has instituted seven sacraments, neither more nor less. It is likewise an article of our faith, that the sacrament of penance, of which sacramental confession is a component part, is one of the said seven sacraments. It is, in fine, the doctrine of the Catholic Church that the same divine Author of the sacraments has laid the obligation of a perpetual and inviolable secrecy on the minister of the said sacrament. . . .[165]

. . . If, therefore, I or any other Roman Catholic Priest (which God forbid, and of which Church History during the long lapse of eighteen centuries scarce ever furnished an example) if, I say, I should so far forget my sacred ministry, and become so abandoned as to reveal either directly or indirectly, any part of what has been entrusted to me in the sacred tribunal of penance, the penalties to which I should thereby subject myself, would be these: 1st. I should forever degrade myself in the eye of the Catholic Church, and I hesitate not to say, in the eye of every man of sound principle: the world would justly esteem me as a base and unworthy wretch, guilty of the most heinous prevarication a priest can possibly perpetrate, in breaking through the most sacred laws of his God, of nature, and of his Church.

2dly. According to the canons of the Catholic Church, I should be divested of my sacerdotal character, replaced in the condition of a Layman, and forever disabled from exercising any of the Ecclesiastical functions.

3dly. Conformably to the same canons, I should deserve to be lodged in close confinement, shut up between four walls to do penance during the remainder of my life.

4thly. Agreeably to the dictates of my conscience, I should render myself guilty, by such a disclosure, of everlasting punishment in the life to come.

Having thus briefly stated to this honorable Court, my reasons for not answering the questions of the Attorney General, in the present instance, I trust they will not be found trivial and unsatisfactory.[166]

It is well here to say a word about Father Kohlmann, as he was one of the most distinguished and honored of the early Jesuits who came to this country after the Revolution. He was born in Alsace and had excellent training at Fribourg and elsewhere in Europe. He came to Georgetown in the District of Columbia in 1803, and as assistant to the master of novices, made many missionary tours. Bishop Carroll picked him out as the person best qualified to look after the serious situation in New York, where he took charge in 1808. The Catholic population at that time consisted of about 14,000 souls, mostly Irish.

He started various educational institutions, and was so much respected that had he not been a Jesuit he would have been elected bishop.[167]

The district attorney asked the witness various questions, among them whether he had ever had the stolen goods in his possession. The mayor and recorder then stopped the examination, stating that either the law allowed the exemption he claimed as a clergyman or that it did not, and that this question must first be determined. The counsel for the defendant, Mr. Sampson, and Richard Riker (1773–1842), a former district attorney who was associated with him, agreed to argue the point, and the committee adjourned the jury until June 14 to give the court time to hear the argument and give judgment. The essential features of Mr. Riker's argument follow:

If in the discussion of the present question, I should discover more than ordinary solicitude, a sufficient apology, I trust, will be found in the novelty and in the magnitude of the cause. On the one hand, the exemption claimed by the Reverend Pastor, is now, for the first time, in this country, brought judicially under examination; and on the other, every enlightened and pious Catholic considers, the free toleration of his religion, involved in the decision that shall be made in this case.

Under these considerations, we respectfully ask of the Court, a patient and a dispassionate hearing: and, we confidently expect to satisfy your Honors, that the law and the constitution are on our side.

To render the argument definite and perspicuous, we shall advance, and endeavour to maintain, two propositions, either of which sustains the witness in the privilege which he claims.

Proposition 1st. That, under the explanation made by Dr. Kohlmann, the 38th Article of the Constitution of our state, fully protects him in the exemption which he claims, *independent of every other consideration.*

Proposition 2d. That the exemption is supported *by the known principles of the common law,* which will not compel any man, to answer a question, that subjects him to a *penalty* or *forfeiture,* impairs his civil rights, or may *degrade—disgrace*—or *disparage* him.[168]

After making various arguments and citing English precedents, Mr. Riker said:

Having thus stripped the cause of embarrassment, and shown, I trust, to the satisfaction of your Honours, that this Court is at perfect liberty, in the judgment that it shall finally pronounce in this cause, to follow the guidance of liberality and wisdom, unfettered by authority; I shall proceed to examine the first proposition which I undertook to maintain, that is, that the 38th Article of the Constitution, protects the Reverend Pastor in the exemption which he claims, *independent of every other consideration.*

The whole article is in the words following:

"And whereas we are required by the benevolent principles of rational liberty, not

only to expel civil tyranny, but also to guard against that spiritual oppression and intollerance, wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind: This convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind. *Provided,* that the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State."

Now we cannot easily conceive of more broad and comprehensive terms, than the convention have used. Religious liberty was the great object which they had in view. They felt, that it was the right of every human being, to worship God according to the dictates of his own conscience. They intended to secure, forever, to all mankind, without distinction or preference, the free exercise and enjoyment of religious profession and worship. They employed language commensurate with that object. It is what they have said.

Again, the Catholic religion is an ancient religion. It has existed for eighteen centuries. The sacrament of penance has existed with it. We cannot in legal decorum, suppose the convention to have been ignorant of that fact: nor were they so in truth. The convention was composed of some of the ablest men in this or in any other nation. Their names are known to the court. A few still live, and we revere the memories of those who are no more. They all knew the Catholic faith, and that auricular confession was a part of it. If they had intended any exception would they not have made it? If they had intended that the Catholics should freely enjoy their religion, excepting always, auricular confession, would they not have said so? By every fair rule of construction we are bound to conclude that they would have said so:—And as the convention did not make the exception neither ought we to make it.

Again there is no doubt that the convention intended to secure the liberty of conscience.—Now, where is the liberty of conscience to the Catholic, if the priest and the penitent, be thus exposed? Has the priest, the liberty of conscience, if he be thus coerced? Has the penitent the liberty of conscience, if he is to be dragged into a court of justice, to answer for what has passed in confession? Have either the privilege of auricular confession? Do they freely enjoy the sacrament of penance? If this be the religious liberty, which the constitution intended to secure—it is as perplexing as the liberty which, in former times, a man had of being tried by the water ordeal, where, if he floated he was guilty—if he sunk he was innocent.[169]

Counsel then made this statement:

We have no *statutory* regulation upon the subject now under consideration, and the principles of the *common law* are accurately and strongly laid down by Lord Mansfield. His words are these, *"My Lords, there never was a single instance, from the Saxon times down to our own, in which a man was ever punished for erroneous opinions concerning rites or modes of worship, but upon some* POSITIVE LAW."

Thus it is clear, in every possible view which we have taken of the question, that the exemption claimed by Dr. Kohlmann, is fully supported by the *enacting clause of the Constitution*. It only remains to be seen, whether this right be impaired by the *proviso* in the Constitution.

The words are, "Provided, that the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State." Now, unless it can be shewn, that auricular confession tends to the excuse of licentiousness, or justifies practices inconsistent with the peace or safety of the State, we cannot be affected by the proviso.

But let us see how it stands. Does auricular confession excuse acts of licentiousness? If the Catholics held that the confessor could unconditionally forgive every, or any sin, which might be committed; or if they held that he could forgive *upon condition that they confessed such sin;* a sinner, on such terms, might go on and repeat his sins at pleasure; and then it might be said, that auricular confession is within the proviso of the constitution. But from a book[170] that contains the Catholic creed on this point, and which my Rev. client has put into my hands, I find the fact to be altogether otherwise. The Catholic holds that his priests can absolve no one, but the *"truly penitent sinner,"* that he must come to them "making a sincere and humble confession of his sins, with a true repentance, and firm purpose of amendment, and a hearty resolution of turning from his evil ways; and that whosoever comes without the due preparation; without a repentance from the bottom of his heart, and a real intention of forsaking his sins, *receives no benefit by the absolution; but adds sin to sin by a high contempt of God's mercy, and abuse of his sacraments."*

According to our faith,[171] give me leave to ask, whether a sinner, under such convictions and resolutions, looking to, and confiding implicitly in the Saviour of the world, would not, through the merits of that Saviour, be absolved from his sins? I answer he would. It is the faith of all Protestants. . . .[172]

Counsel then made a quotation from Sir William Blackstone in an effort to lessen the deep-seated Protestant objection to auricular confession on the part of Protestants. The quotation was effective inasmuch as its author was known to have been none too friendly toward Roman Catholics and all dissenters from the establishment. "As to papists," he was quoted as saying,

what has been said of the protestant dissenters, would hold equally strong *for a general toleration of them;* provided their separation was founded only upon difference of *opinion in religion,* and their principles did not also extend to a subversion of the *civil* government. If once they could be brought to renounce the supremacy of the Pope, *they might quietly enjoy their seven sacraments, their purgatory, and* AURICULAR CONFESSION; their worship of relics and images; nay, even their transubstantiation. But while they acknowledge a foreign power, superior to the sovereignty of the kingdom, they cannot complain if the laws of that kingdom will not treat them upon the footing of good subjects.

Here then, we have the explicit admission of Mr. Justice Blackstone, that auricular

confession is innocent, that is, with all the other rites and ceremonies of the Catholics, might be quietly enjoyed by them; and but for their maintaining the supremacy of the Pope, he sees no reason why they should not be *universally tolerated*. With regard to the supremacy of the Pope, we know that to be merely spiritual. They consider him the head of the church; but politically, or as connected with government, or civil society, they acknowledge no supremacy whatsoever in the pope. History shews us, that Catholic princes have oftentimes gone to war against the Pope in his character of a temporal prince.[173]

In closing Mr. Riker said:

Your Honors,

I confess I feel a deep interest in this cause. I am anxious that the decision of the Court should be marked with liberality and wisdom. I consider this a contest between toleration and persecution. A contest involving the rights of conscience. A great constitutional question, which as an American Lawyer, I might, with strict right and perfect propriety have discussed, independent of adjudged cases. To compel the Reverend Pastor to answer, or to be imprisoned, must either force his conscience or lead to persecution. I can conceive of nothing, more barbarous—more cruel—or more unjust than such an alternative. To compel him to answer, against his religious faith or to confine his person, would be the highest violation of right that I have ever witnessed. It would cast a shade upon the jurisprudence of our country. The virtuous and the wise, of all nations, would grieve that America should have so forgotten herself, as to add to the examples of religious despotism!

I cannot express my convictions on this important and delicate subject, better than in the language of that enlightened judge [Lord Mansfield] whose opinion I before quoted. "Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites, or—Martyrs."

"There is nothing, certainly, more unreasonable, more inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian Religion, more iniquitous and unjust, more impolitic than PERSECUTION. It is against natural religion, revealed religion, and sound policy."

Thus have I closed a subject of vast interest to the parties concerned. I could have wished that my argument had been more perfect, and more persuasive. The learned counsel however who is associated with me will more than supply its defects. It only remains for me to make my acknowledgments to the court for the very attentive hearing which it has been pleased to give me, and to express the entire confidence which my reverend client feels, in the wisdom and in the purity of those, to whose judgment he now cheerfully submits himself.[174]

When he had finished a Mr. Blake, evidently a lawyer who had come into the court with the clergymen and trustees of the church, rose and made a few impressive remarks as a Roman Catholic. He approved the view which Mr.

Riker had taken of the question, and affirmed that in his judgment the exemption privilege of the witness was secured both by the principles of common law and by the constitution of the state.

He was followed by the district attorney, who took the ground that except as an attorney was not expected to disclose his client's secret it was the principle of the common law that one of the primary duties of a citizen was to disclose all his knowledge concerning matters connected with the public good. He further felt that from the standpoint of the State the pretensions set up by counsel for the accused were inconsistent with its safety. He added, referring to the liberty of conscience granted by the State, that this liberty is

granted let it be remarked, and by a *protestant* people to all *others*—but these cannot be entitled to do things, inconsistent with the peace and safety of the grantors. Yet if the priests of the Roman church are excused from answering, they are permitted to hold the safety of their benefactors in their hands—nay they are bound to disregard it. A protestant must answer all questions, and by those answers protect all the society, and the Roman with the rest. But the latter, according to the pretension set up, is to be indulged in endangering all the rest. And this is called liberty of conscience! This, the equality in religious freedom, to which they aspire! If it were merely claimed that they might be silent, when they should honestly deem it expedient—we should never be induced to yield the claim, because society can never acknowledge the expediency of concealing crime. But the pretension far exceeds this. They actually claim the liberty of unqualified and inviolable subjection to silence! The liberty of not being permitted to speak—the liberty of being compelled to be silent—and that in cases, when it may concern the safety of the whole state, that a disclosure should be made. . . .[175]

He closed his argument with these words:

Finally the constitution has granted, religious *"profession and worship,"* to all denominations, *"without discrimination or preference:"* but it has not granted exemption from previous legal duties. It has expelled the demon of persecution from our land: but it has not weakened the arm of public justice. Its equal and steady impartiality has soothed all the contending sects into the most harmonious equality, but to none of them has it yielded any of the rights of a well organized government.[176]

Mr. Sampson, as colleague of Mr. Riker in defending Father Kohlmann, replied to the district attorney. It is not necessary to enter in detail into his argument, since most of his points had already been covered by Mr. Riker. A few paragraphs are however worth quoting. He laid special emphasis on the 38th article of the state constitution by which all religions "are put upon the very same footing, without preference or discrimination," and added:

Under this constitution, it is lawful for one to say, I hold of Christ, another, I hold of Paul, another, I of Cephas, another, I of Apollos. One only exception there is, and

that is the proviso, that this liberty of conscience shall not be construed, to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state, and this brings me closer to the point.

The District Attorney has laid it down, as though it were conceded, that the general principle of law is with him, and that we who claim an exception, must shew ourselves entitled to it. I explicitly deny that proposition. The constitution here lays down the general rule, that all mankind shall be tolerated, without preference or discrimination, and we claim no exception from that rule. It is our adversary that would enforce the proviso, and take advantage of it against us; and it was for him to shew how we fell within it. It was for him to shew in what our acts were licentious, or our practices dangerous. The modest worth and unambitious courses of this pastor, often to be found by the bed of sickness, or in the abode of sorrow, but never in the repairs of revel or disorder, repels all idea of licentiousness. . . .[177]

He called attention to the fact that the district attorney had thought that there might be danger to the State if the priest could not, under certain circumstances, reveal the confidences of the confessional, especially in view of some of the tenets of the Church. He felt that there was a misunderstanding as to the purpose and power of the papacy. "I shall therefore," he said,

knowing as we all do, who they are that compose the bulk of the Roman catholics in this city, content myself by *supposing* that they will not give the city to the English. No, not even if the troops of his holiness himself, should join in alliance with the British to invade it. And I maintain in the presence of my clients, and in their name, that doctrine boldly and firmly. That though the catholics must acknowledge the pope as supreme head of their church, yet they know, their duty as citizens would oblige them to resist him as a temporal prince, if in that character, he should make war upon that country, which is theirs, and theirs by choice, the strongest of all ties. Yes, and if the government was too slow in providing them with arms, they would with their pick-axe, or their spade, or their cart-rung, or paradventure, some old sanctified shillelah, the trophy of days that are past, drive the enemy from his cannon, as it has happened before. This is my supposition. And I suppose further, that there is one only way to make such persons dangerous; that is, to put their clergyman in prison for not betraying the most holy of all engagements towards God or man.[178]

. . . We claim no supremacy. We seek nothing but pure and perfect equality. From the bottom of our hearts we sincerely tolerate you all. We will lay hands on none of you, for your worship or profession; and for ourselves, we claim neither more nor less. Hands off on all sides. And if any of you are aggrieved we will invoke the constitution in your favour, as we do in our own. We will join with all good citizens in loving, respecting, and defending it. For it is our own. If the protestant dissenters, as the English term goes, are not so foolish, so neither are we so simple, as not to know the difference between the toleration act of England and the toleration of the constitution of New-York. The one may ease the load, but the other takes it off. The former is from one set of subjects to another; the latter is a compact between freemen. Let us have

our rights to-day, that when it falls to our turn to judge, as it may to morrow, we may know of "no preference or discrimination." Every citizen here is in his own country. To the protestant it is a protestant country; to the catholic, a catholic country; and the jew, if he pleases, may establish in it his New Jerusalem. Not only so, but this very plank upon which I stand, as long as I continue to occupy it in arguing this cause, is my catholic plank; and if this gentleman be a calvinist, that, he stands upon, is his calvinist plank. . . .[179]

Let us remind the reader that both learned counsel for the defense were Protestants, and that it was a Protestant, the Honorable De Witt Clinton (1769–1828), afterward governor of the state, who on the 4th of June, 1813, in the presence of the jury, delivered the decision of the court, which was unanimous, though leaving it to the presiding officer to explain the reasons. He outlined the facts of the case and quoted Roman Catholic authorities, including the Council of Trent, as to the meaning of the sacrament of penance and the obligation of secrecy on the part of the priest. He explained that penance was one of the seven sacraments of the Church, and that it consists on the part of the penitent, of three things: contrition, confession, and satisfaction on the part of the minister in the absolution pronounced by the authority of Jesus Christ.[180]

He also called attention to the fine attitude taken by Father Kohlmann throughout the trial, and stated that his conduct had been marked by a laudable regard both for the laws of the country and the duties of his sacred office. The court took the ground that a witness in Father Kohlmann's position was not bound to answer a question which might disgrace or degrade him and interfere with his standing.

> It cannot therefore, for a moment be believed, that the mild and just principles of the common Law would place the witness in such a dreadful predicament; in such a horrible dilemma, between perjury and false swearing: If he tells the truth he violates his ecclesiastical oath—If he prevaricates he violates his judicial oath—Whether he lies, or whether he testifies the truth he is wicked, and it is impossible for him to act without acting against the laws of rectitude and the light of conscience.
>
> The only course is, for the court to declare that he shall not testify or act at all. . . .[181]

Mayor Clinton quoted again the guarantee of religious freedom in the constitution of New York state and made some interesting comments upon it.

> Considering that we had just emerged from a colonial state, and were infected with the narrow views and bigotted feelings, which prevailed at that time so strongly against the Roman Catholics, that a priest was liable to the punishment of death if he came into the colony, this declaration of religious freedom, is a wonderful monument of the wisdom, liberality, and philanthropy of its authors. Next to William Penn, the framers of our constitution were the first legislators who had just views of the nature of religious liberty, and who established it upon the broad and imperishable basis of

justice, truth, and charity: While we are compelled to remark that this excellent provision was adopted by a majority of one, it is but proper to say, that the colonial statute against Roman Catholic Priests, originated more from political than religious considerations. The influence which the French had over the six nations, the Iroquois, and which was exercised to the great detriment of the British colonies, was ascribed to the arts and management of the Jesuits, and it was therefore, in violation of all respect for the rights of conscience, deemed of essential importance to interpose the penalty of death against their migration into the colony.[182]

The court based its decision on the constitution of the state, for at that time a religious-freedom clause of the Federal Constitution could not be invoked in any state case inasmuch as the Fourteenth Amendment had not been passed and broadly interpreted by the Supreme Court. And yet the court did refer in passing to the Federal Constitution.

A provision [it said] conceived in a spirit of the most profound wisdom, and the most exalted charity, ought to receive the most liberal construction. Although by the constitution of the United States, the powers of congress do not extend beyond certain enumerated objects; yet to prevent the danger of constructive assumptions, the following amendment was adopted: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." In this country there is no alliance between church and state; no established religion; no tolerated religion—for toleration results from establishment—but religious freedom guaranteed by the constitution, and consecrated by the social compact.

It is essential to the free exercise of a religion, that its ordinances should be administered—that its ceremonies as well as its essentials should be protected. The sacraments of a religion are its most important elements. We have but two in the Protestant Church—Baptism and the Lord's Supper—and they are considered the seals of the covenant of grace. Suppose that a decision of this court, or a law of the state should prevent the administration of one or both of these sacraments, would not the constitution be violated, and the freedom of religion be infringed? Every man who hears me will answer in the affirmative. Will not the same result follow, if we deprive the Roman catholic of one of his ordinances? Secrecy is of the essence of penance. The sinner will not confess, nor will the priest receive his confession, if the veil of secrecy is removed: To decide that the minister shall promulgate what he receives in confession, is to declare that there shall be no penance; and this important branch of the Roman catholic religion would be thus annihilated. . . .[183]

The closing words of the court, before acquitting the defendants, were these:

If a religious sect would rise up and violate the decencies of life, by practicing their religious rites, in a state of nakedness, by following incest, and a community of wives. If the Hindoo should attempt to introduce the burning of widows on the funeral piles of their deceased husbands, or the Mahometan his plurality of wives, or the pagan his bacchanalian orgies or human sacrifices. If a fanatical sect should spring up, as formerly

in the city of Munster, and pull up the pillars of society, or if any attempt should be made to establish the inquisition, then the licentious acts and dangerous practices, contemplated by the constitution, would exist, and the hand of the magistrate would be rightfully raised to chastise the guilty agents.

But until men under pretence of religion, act counter to the fundamental principles of morality, and endanger the well being of the state, they are to be protected in the free exercise of their religion. If they are in error, or if they are wicked, they are to answer to the *Supreme Being,* not to the unhallowed intrusion of frail fallible mortals.

We speak of this question, not in a theological sense, but in its legal and constitutional bearings. Although we differ from the witness and his brethren, in our religious creed, yet we have no reason to question the purity of their motives, or to impeach their good conduct as citizens. They are protected by the laws and constitution of this country, in the full and free exercise of their religion, and this court can never countenance or authorize the application of insult to their faith, or of torture to their consciences.[184]

So ended a case that was of the highest significance. As it is generally not referred to in American histories, and even most Catholic historians have given it little attention, it has seemed best to deal with it at some length, since the arguments of counsel for the defense and the opinion of the court are of importance and validity today.

Although the matter had now been judicially determined, it seemed well to have the substance of the decision incorporated in a statute of the state. Consequently, on December 10, 1828, a law was duly enacted to the effect that

> No minister of the Gospel or priest of any denomination whatsoever shall be allowed to disclose any confession made to him in his professional character in the course of discipline enjoined by the rules or practices of such denomination.[185]

Some other states of the union have similar laws. In Arizona, for instance, a clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs. Alaska has closely similar provisions. So have Colorado, California, and many other states. The Arkansas law is the same as that of New York, except that the minister instead of not being "allowed" to testify, is not "compelled" to testify. The laws in the other states differ little from these.[186]

In general these statutes place the clergyman on the same basis as an attorney with reference to confidences made to him. In all cases affecting a clergyman they refer only to confessions made to him in his professional capacity as a confessor. As the Supreme Court of Nebraska, in a well-known case, stated: The confession must be made "in confidence of the relation and under such circumstances as to imply that it should forever remain a secret in the breast

of the confidential adviser."[187] In some states the matter is left to judicial interpretations, which in higher courts have generally followed the New York precedent.

Those interested in religious liberty may well be thankful that at the time this critical issue arose, whose right decision meant so much to the Roman Catholic Church in this country, a group of farsighted and tolerant Protestants took the lead in seeing that justice under our Constitutional guarantees was secured. This is the type of inter-faith co-operation which means much for the cause of religion and religious freedom. It has been exemplified on several significant occasions in this country where Jewish, Protestant, and Catholic Constitutional rights, as well as those of atheists, were involved.

Section 6. THE SUPPORT OF THE ROMAN CATHOLIC POSITION

During the period under discussion, roughly the first hundred years of Roman Catholicism in the United States, great progress was made in interpreting the position of the Church to a dominantly Protestant nation, as we have tried to show in the sections immediately preceding. The Church was faced with two major intellectual fears on the part of Americans—that the claimed supremacy of the pope in the matter of "morals" as well as of religion might lead to interference in our politics, and that Roman Catholicism was inconsistent with liberty and unfriendly to democracy. Both of these views are still stumbling blocks to many, but they have been explained in such a way as to remove the serious apprehensions from a national standpoint of most thoughtful Americans. This has been accomplished largely through the efforts of liberal members of the hierarchy[188] from the time of Archbishop John Carroll (1735–1815), Bishop John England (1786–1842) and Archbishop Spalding (1810–72), to Cardinal James Gibbons (1831–1921) and Archbishop John Ireland (1838–1918)—men whose American patriotism and general intelligence could not and cannot be questioned. They were aided by a few outstanding priests and laymen—men like the Paulist Father Isaac Hecker (1819–88), Orestes Brownson (1803–76), a former Unitarian minister who became a convert, and others. These and other apologists have resolved difficulties in many influential groups even when they could not convert their members to their own point of view.

Father Hecker thought that the great American illusion was that democracy springs from Protestantism. He did much to convert the Roman Catholic immigrants to the democracy of the United States, and to reassure Protestants that allegiance to the papacy was not inconsistent with American patriotism. He was the leader of a group—all Americans and all converts—who in 1858 founded the Missionary Society of St. Paul the Apostle, known as the Paulist Fathers,

whose main purpose, in addition to the leading of a holy life, was considered to be helping to convert America to Catholicism.

Archbishop Ireland clearly saw the contribution of Father Hecker and like-minded American priests in adjusting the Roman Catholic Church to the traditions and Constitutional provisions of this country. In his introduction, written in 1891, to Walter Elliott's *Life of Father Hecker*—a work which, with the introduction, received the imprimatur of Archbishop Corrigan—he wrote:

> . . . Priests foreign in disposition and work were not fitted to make favorable impressions upon the non-Catholic American population, and the American-born children of Catholic immigrants were likely to escape their action. And, lest I be misunderstood, I assert all this is as true of priests coming from Ireland as from any other foreign country. Even priests of American ancestry, ministering to immigrants, not infrequently fell into the lines of those around them, and did but little to make the Church in America throb with American life. Not so Isaac Thomas Hecker. Whether consciously or unconsciously I do not know, and it matters not, he looked on America as the fairest conquest for divine truth, and he girded himself with arms shaped and tempered to the American pattern. I think it may be said that the American current, so plain for the last quarter of a century in the flow of Catholic affairs, is, largely at least, to be traced back to Father Hecker and his early coworkers. It used to be said of them in reproach that they were the "Yankee" Catholic Church; the reproach was their praise.[189]

But this liberal opinion was not to go entirely unchallenged. A few years later (1899) Pope Leo XIII (1810–1903), in an apostolic letter addressed to Cardinal Gibbons, expressed his disapproval of some of the opinions introduced in Elliott's book: ". . . For it raises the suspicion that there are some among you who conceive of and desire a church in America different from that which is in the rest of the world."[190] This raises a very important issue– the whole question of the Church and freedom, a question to which we frequently return in these volumes.[191]

Another early American Catholic apologist, of a very independent type, Orestes Brownson (1803–76),[192] has much to say of the relation of the Church to liberty and democracy, especially through protecting them by preventing their abuse. For example, writing in the *Quarterly Review* in 1845, he said:

> Democracy is a mischievous dream wherever the Catholic Church does not predominate to inspire the people with reverence and to teach and accustom them to obedience to authority.[193]

Again, in his *Essays and Reviews* (1852) he writes:

> . . . The Roman Catholic religion, then, is necessary to sustain popular liberty, because popular liberty can be sustained only by a religion free from popular control, above the people, speaking from above and able to command them.[194]

In a later section entitled "The Roman Catholic Adjustments to American Democracy" the matters touched on above will be further developed, and special attention given to the relatively liberal attitude on Church–State problems of two great Catholic Americans of the close of the nineteenth and the beginning of the twentieth century—Cardinal Gibbons and Archbishop Ireland.[195]

Section 7. THE DEVELOPMENT OF THE CHURCH AS A PUBLIC POWER IN THE UNITED STATES

It is difficult today, when Church statistics show a Catholic population of about 26,000,000 persons, or nearly one in six of our inhabitants, to realize its amazing growth since the close of the American Revolution, when its membership could be counted in five figures, being probably less than 30,000. Many causes have contributed to this progress, of which, humanly speaking, the large immigration from Europe, especially from Ireland, Germany and Austria, and Italy was the most important, and the large birth rate a subsidiary factor. But corresponding to this increase in numbers was an increase in effective organization, showing the power of the Church to adjust itself to new conditions. A few dates tell the story.

Mother school of the parochial schools in the United States, Philadelphia, 1782.

Rev. John Carroll appointed superior of the missions in the United States, 1784.

First diocese, Baltimore, 1789.

First college, Georgetown, founded, 1789.

Rev. John Carroll consecrated first bishop, 1790.

First Roman Catholic Diocesan Synod in the United States, Baltimore, 1791.

First archdiocese, Baltimore, 1808.

Baltimore Cathedral completed, 1821.

United States Catholic Miscellany established, 1822.

First Plenary Council, Baltimore, 1852.

American College at Louvain founded, 1857.

American College at Rome founded, 1859.

Second Plenary Council decrees that a parochial school should be established in every parish, 1866.

Knights of Columbus organized, 1882.

Catholic University of America founded, 1889.

Apostolic Delegation to the United States established, 1893.

Roman Catholic Church in the United States outgrows its missionary status as an activity of the Sacred Congregation for Propagating the Faith, becoming largely self-governing under the control of the papacy—*Sapienti Consilio*, 1908.

Catholic Encyclopedia published, 1914.
National Catholic Welfare Conference established, 1919.
Archdiocese of Washington (D.C.) established, 1947.
Number of Roman Catholic archbishops and bishops reaches over 150, 1948.

Every stage in this growth has been marked by intense devotion on the part of members of the Church, who have generally shown their capacity to be loyal to Rome in matters of religion and ethics while being loyal to the United States government in political matters. Recently the main point of difficult adjustment has been in the field of education, where obviously both Church and State have obligations, and in certain adjustments between the Vatican as a State with the United States. These matters will be fully discussed later.*

* Especially in XVIII, 2, XIX, and end of XXIII, 4, (1).

Chapter XIII

THE JEWISH ADJUSTMENTS TO AMERICAN CHURCH-STATE CONDITIONS

Section 1. THE COLONIAL CONDITIONS

Whether the Jews should be considered primarily a racial or a religious group is much discussed, but has little direct bearing on our subject, as all agree that they have as a people at least a definitely religious background, and a very distinctive one.

American Jews quote with pride the fact that Columbus' voyage was largely made possible by the financial help of a rich Jewish merchant, Luis de Santangel. This gives them a connection with the discovery of America. But prior to the Revolution there were only scattered groups of Jews in the North American colonies, and in the decades immediately following they did not increase to any large extent. That they had a hard time in colonial America must not blind us to the fact that on the whole their lot here was better than in most parts of Europe. Prejudice against them was deep set, due to historic factors which will be considered when we come to discuss anti-Semitism.[1] It was not until the American and French revolutions had vindicated the rights of man that they were to be treated anywhere exactly like other citizens.

The early status of the Jews in most of the colonies may be gathered from correspondence of the middle seventeenth century between the directors of the West India Company in Amsterdam and Governor Peter Stuyvesant (1592–1672). It shows a dislike of having them as colonists and an unwillingness to have them take any part in public life, but a desire on the part of the Company to treat them humanely.

The directors, under date of April 26, 1655, wrote to the governor:

> We would have liked to agree to your wishes and request that the new territories should not be further invaded by people of the Jewish race, for we foresee from such immigration the same difficulties which you fear, but after having further weighed and considered this matter, we observe that it would be unreasonable and unfair, especially because of the considerable loss sustained by the Jews in the taking of Brazil,

and also because of the large amount of capital which they have invested in shares of this Company. After many consultations we have decided and resolved upon a certain petition made by said Portuguese Jews, that they shall have permission to sail to and trade in New Netherland and to live and remain there, provided the poor among them shall not become a burden to the Company or to the community but be supported by their own nation. You will govern yourself accordingly.[2]

The following year they sent a supplementary letter.

The permission given to the Jews to go to New Netherland and enjoy the same privileges as they have here [in Amsterdam] has been granted only as far as civil and political rights are concerned, without giving the said Jews a claim to the privilege of exercising their religion in a synagogue or a gathering; so long, therefore, as you receive no request for granting them this liberty of religious exercise, your considerations and anxiety about the matter are premature, and when later something shall be said about it, you can do not better than to refer them to us, and await the necessary order. Your next remark concerning trade does not as yet divert us from our resolution.[3]

Again, on June 14, 1656, they wrote:

We have seen and heard with displeasure, that against our orders of the 15th day of February, 1655, issued at the request of the Jewish or Portuguese nation, you have forbidden them to trade to Fort Orange and the South River, also the purchase of real estate, which is granted to them without difficulty here in this country, and we wish it had not been done, and that you had obeyed our orders, which you must always execute punctually and with more respect: Jews or Portuguese people, however, shall not be employed in any public service (to which they are neither admitted in this city), nor allowed to have open retail shops, but they may quietly and peacefully carry on their business as aforesaid and exercise in all quietness their religion within their houses, for which end they must without doubt endeavor to build their houses close together in a convenient place on one or the other side of New Amsterdam—at their choice—as they have done here.[4]

Stuyvesant's hands were thus forced. The Jews now had virtually the same rights as in Holland, but not a synagogue. They prospered, in spite of Stuyvesant, being rather active in the community, though the only trade legally open to them was that of slaughtering. Before the end of his rule, they received certain new privileges such as ownership of property, permission to engage in foreign and domestic, but not retail, trade, and burgher rights. But they could not hold public office.

Under the English rule there were ups and downs, but we find a Jewish school in 1755 and several Jewish voters in 1761. It was not, however, until the state constitution of 1777 that Jews received full rights.

Since Amsterdam was probably at this time somewhat more liberal to the

Jews than most American colonies, the correspondence throws much light on the difficulties they experienced and the limitations under which they lived.

Their American history, and indeed their spiritual and cultural life generally since the destruction of Jerusalem in A.D. 70, have centered in a distinctive religious institution, the synagogue, which can be traced back to the Babylonian captivity (586–538 B.C.). In 1654 some twenty-three Jews had arrived in New Amsterdam (New York), having probably come from Brazil, which had passed from the relatively tolerant Dutch to Portuguese rule. By 1682 they had rented a house for the purpose of holding religious worship, and a synagogue is known to have existed in the city in 1695. It was between Broadway and Broad Street and was the first in North America. Its congregation Shearith Israel, "the Remnant of Israel," is still worshipping at the Spanish and Portuguese Synagogue on Central Park West. Other early synagogues were in Charleston, South Carolina, 1750;[5] Newport, Rhode Island, where there was a very important and respected Jewish colony with several hundred members, among whom Portuguese Jews were prominent, 1763;[6] and in Philadelphia, where, after a Jewish community had existed for a quarter of a century, a subscription was raised in 1773 for the purpose of building a synagogue, though the building was not erected until about ten years later. Savannah had a Jewish congregation as early as 1734, the Jews there having been received in a friendly way by Governor Oglethorpe,[7] and Richmond, Virginia, had one at least as early as 1790.[8]

The Newport Synagogue referred to, generally called the Touro Synagogue, after its first Rabbi, Isaac Touro, who reached Rhode Island from Jamaica in 1760, is the oldest surviving synagogue in the United States. It is considered of such significance that in the summer of 1947 it was designated by the National Park Service of the Department of the Interior as a national religious shrine. The Speaker of the House of Representatives, Hon. Joseph W. Martin, gave the address and a tablet was unveiled. This tablet refers to the town meeting held in the synagogue at the time of George Washington's visit to the city in 1781, and to the fact that the Rhode Island General Assembly met there from 1781 to 1784, while their building was being rebuilt. In his address Speaker Martin said:

> Symbolic of our deep-rooted tradition of religious freedom, this long-revered house of worship now testifies to the spirit of mutual good-will and brotherhood that prevails among Americans of every faith.[9]

In connection with the development of Judaism in America it should be remembered that probably in no other place or time has the Jewish "congregation," considered as a group with a common faith and form of synagogue worship, rather than as a quasi-political community, become so prominent. This fitted in

well with the growing American creed of inclusive religious freedom, broad citizenship, and separation of Church and State which was to find its fruition in the Federal republic. The roots of this emphasis on the "congregation" were laid in colonial times, and became the basis of much that later came to mark Reform Judaism.[10]

There are no accurate statistics as to the number of Jews in the thirteen original colonies, but it probably at no time exceeded one thousand.[11]

Jews were under political disabilities nearly everywhere for most of the colonial period—even Rhode Island slipped from its early tradition of tolerance during part of the eighteenth century. However, even where they were not given full constitutional rights, ways were found by which they were permitted to become, like Michael Gratz of Philadelphia (1740–1811), prominent in intercolonial commerce, and occasionally men of standing were elected to serve in the colonial assemblies. Of these there were examples in Georgia, South Carolina, and Pennsylvania,[12] and probably in other colonies. They were also occasionally granted exemptions from duties inconsistent with their religious scruples. For example, in the journals of the Provincial Congress of New York, under date of January 22, 1776, there is this reference:

> ... Hart Jacobs of the Jewish Religion having signified to this Committee, that it is inconsistent with his religious profession to perform military duty on Friday nights, being part of the Jewish Sabbath, it is Ordered that he be exempted from military duty on that night of the week, to be subject nevertheless to the performance of his full tour of duty on other nights.[13]

The status of Jews in most colonies was somewhat improved after the passing of the parliamentary Act of 1740, which provided that foreigners who had been resident in the British colonies for seven years could be naturalized. In the case of Jews an oath of fidelity on the Old Testament was considered sufficient.[14] After the outbreak of the Revolution the franchise was gradually extended so that within a few decades the Jews had this privilege everywhere, but the right to hold office was won with more difficulty. The Maryland struggle for complete political emancipation was, as we shall see in a later section,[15] the longest. Here the Cohen family was particularly active and effective in the efforts made to overcome discrimination, but the final victory was due mainly to a Christian, Thomas Kennedy.

Recent studies and especially a book published in 1947—*American Overture Jewish Rights in Colonial Times*[16]— give much more information on the subject than has hitherto been available. The work quoted takes up the situation colony by colony, and shows both the disabilities under which Jews labored and the progress made. It is encouraging in that it indicates that conditions in the colonies

were on the whole better than in Europe. There "At the best, Jews were suffered. Nowhere did they enjoy the full rights of burghers and free men. . . ."[17] Due partly to their own efforts and partly to the ideas of democracy and freedom that were slowly developing in the colonies, the rights of the small Jewish groups were expanding, and there was increasing recognition of the fact that the Jews might aspire ultimately to full civil equality. In England, even after the Navigation Acts of 1660, the Jews could not engage in foreign trade because they were considered of foreign origin. As late as 1685 almost half of the London Jews were arrested for failure to attend church.[18]

As to the colonies, those where the conditions were the best were Massachusetts and South Carolina. The tolerance of the first-named toward the Jews in a colony so given to intolerance toward Quakers and other nonconformists is surprising, but it is due to the fact that the Puritans had a profound respect for Old Testament history and law, and felt that they were establishing in New England what they called "the new Canaan." Goodman goes so far as to say that the treatment of the Jews by the Puritans "remains without a black mark."[19] They were never considered public enemies. The fact that Hebrew was early studied at Harvard was significant. So is the fact that the college gave an unconverted Jew an M.A. degree in 1720, although no such degree was conferred at Oxford until 1870.[20] This was not, however, an isolated American instance, for late in the colonial period a Jew graduated from the University of Pennsylvania (1772) and from Columbia in 1774.

Massachusetts was much more tolerant than its neighbor, Connecticut, where no Jewish congregation received recognition until 1843, a quarter of a century after the state church had been disestablished.[21]

The South Carolina situation is equally remarkable. The constitution of 1669, due largely to Locke's influence, merely required everyone to have a religion,[22] and an early naturalization law in 1697—later repealed—made Jews eligible. Charleston had the second Jewish synagogue in America in 1755. It was probably, however, only a converted dwelling. In 1774 a Jew, Francis Salvador, Jr., was elected to the First Provincial Congress. We are told that he was "the first Jew in American history, and probably the first Jew in the modern world to serve in an elective office."[23] Many early travelers referred to the generous cultural recognition of the Jews in the Charleston area.

The Georgia situation was somewhat similar. The charter of 1735 gave liberty of conscience to all "except Papists."[24] They were given some early land grants, and in Savannah, which was a Jewish center, there were minor public offices filled by Jews from 1765 to 1768,[25] and a cemetery, always a special desideratum of the Jews, was provided for in 1773. Perhaps these early colonial conditions favorable to the Jews laid foundations which resulted in a Jew, David

Emanuel, being elected governor of Georgia in the early republican period, 1801, the first of many Jews to hold this honor in the United States.[26]

Other colonies where conditions, on the whole, were encouraging were Rhode Island and Pennsylvania. Roger Williams, as is well known,[27] planned to open his colonies even to pagans, Jews, and Turks, and was an opponent of any wall of separation between Jew and Christian. In 1665 a statute provided that "all men of competante estates, and of civill conversation" who submitted to the civil magistrates "though of differing judgments," were eligible to vote or hold office.[28] Unfortunately, however, there is some mystery about the fate of this action, for when the statutes were published in 1719 the words "Professing Christianity" were added after "all men," and the Roman Catholics were excepted. The Jews, although tolerated to a larger extent than Roman Catholics, had more difficulty in Rhode Island than in Massachusetts, so much so that a distinguished Newport Jew, one Aaron Lopez, being denied naturalization in Rhode Island in 1762 found it necessary to go over the border to Massachusetts, where he was naturalized without serious difficulty.[29] And yet in 1747 two Jews had been among the incorporators of the Redwood Library in Newport; and even more significant, the Brown University charter granted by the Legislature in 1764, and a Baptist institution in origin, guaranteed "full free Absolute and uninterrupted Liberty of Conscience" in the college, which was opened the following year. An extant letter of the Trustees, dated January 1, 1771, is one of the most liberal documents in the early history of toleration in this country. It showed that Jewish youth would be admitted to what is now Brown University on the same terms as Christians, and that it would not be necessary for them to attend Christian worship.[30] No Jewish students are known to have taken advantage of this privilege, but it was highly significant and encouraging.

In Pennsylvania the laws of 1682 provided for complete toleration for all "who confess and acknowledge the one Almighty and Eternal God, to be the Creator, Upholder, and Ruler of the world,"[31] thus admitting Jews but excluding agnostics and atheists, although voting and officeholding were restricted to Christians, and at times to Protestant Christians. A Jewish burial ground was permitted in Philadelphia in 1738 and a congregation was established in 1747, but there was no synagogue until the Revolution.

In western New Jersey, probably due to the influence of William Penn, one of the incorporators, no one was to be disturbed "for the sake of his opinion, judgment, or worship towards God."[32]

If these Jewish colonial conditions and signs of slow but real progress are borne in mind, it will be easier to understand the developments outlined later in this chapter, as well as the work of the National Conference of Christians and Jews,[33] political Zionism as an American issue,[34] and various other sections deal-

ing with the Jews, especially the one on present Church-State relations in the United States as far as the Jews are concerned.[35]

Section 2. THE ADJUSTMENT TO THE CONDITIONS OF THE NEW GOVERNMENT

The Jews had in most cases favored the Revolutionary movement,[36] inasmuch as their status outside of a few places like Rhode Island and New York had been precarious; many of them in Newport and other Jewish centers both volunteered for war service and gave liberally to the colonial cause. Being a small minority, they, naturally, were strong supporters of religious freedom. They represented, however, such scattered groups in a few urban centers that it was a long time before they profited in any large way by the new movement in American life. However, as a result of the founding of the new American Federal State several difficult adjustments were made. The most difficult and important was the removal of all civil disabilities. Here public opinion in the republic and the influence of the spirit of the Declaration of Independence and the other charters of American freedom resulted in the religious disabilities of Jews being gradually eliminated in the various states. These had been of different types, a majority of the thirteen original colonies having at least confined voting and officeholding to Christians—generally then understood to be those who did not deny the Trinity—and also in some places excluding Roman Catholics.

We have seen[37] that the Jews played an honorable part in the Revolution and in the founding of the government. Because of this and the fact that American Constitutional freedom fitted in well with their needs and ideals, they adjusted themselves without serious difficulty to the new conditions. The patriotic attitude of Haym Salomon (*c.* 1740–85) during the Revolution, and of such leaders as Rabbi Gershom Seixas (1746–1816) in the early days of the Republic helped them. Salomon's friendship with Robert Morris and other patriotic leaders and his generous support of the government have already been described.[38] Rabbi Seixas was one of fourteen clergymen to participate in Washington's inauguration, and on Thanksgiving Day, 1789, he preached the first English sermon known in connection with such a public occasion in America. The service was conducted partly in English, partly in Hebrew and Spanish. The *Daily Gazette,* reporting the sermon, referred to it as an "excellent discourse, . . . highly deserving the attention of every pious reader, whether Jew or Christian, as it breathes nothing but pure morality and devotion."[39] It was significant of this era of good feeling among the religious bodies following the adoption of the Constitution that this rabbi, who was for fifty years the leader of the Jewish community in New York, was invited to preach in St. Paul's Episcopal Church.

The most interesting document in connection with the Jews and the formation of our government was the exchange of letters between the important Hebrew congregation in Newport and President Washington. This resulted from the president's visit in 1790, when a moving address was delivered to him on behalf of the Jews of the city:

Sir:—Permit the children of the stock of Abraham to approach you with the most cordial affection and esteem for your person and merit, and to join with our fellow-citizens in welcoming you to Newport.

With pleasure we reflect on those days of difficulty and danger when the God of Israel, who delivered David from the peril of the sword, shielded your head in the day of battle, and we rejoice to think that the same spirit which rested in the bosom of the greatly beloved Daniel, enabling him to preside over the provinces of the Babylonian Empire, rests and ever will rest upon you, enabling you to discharge the arduous duties of Chief Magistrate of these States.

Deprived, as we have hitherto been, of invaluable rights of free citizens, we now—with a deep sense of gratitude to the Almighty Disposer of all events—behold a government erected by the majesty of the people, a government which gives no sanction to bigotry and no assistance to persecution, but generously affording to all liberty of conscience and immunities of citizenship, deeming every one, of whatever nation, tongue or language, equal parts of the great governmental machine. This so ample and extensive Federal Union, whose base is philanthropy, mutual confidence and public virtue, we cannot but acknowledge to be the work of the great God, who rules the armies of the heavens and among the inhabitants of the earth, doing whatever deemeth to Him good.

For all the blessings of civil and religious liberty which we enjoy under an equal and benign administration, we desire to send up thanks to the Ancient of days, the great Preserver of men, beseeching Him that the angel who conducted our forefathers through the wilderness into the promised land may graciously conduct you through all the difficulties and dangers of this mortal life; and when, like Joshua, full of days and of honors, you are gathered to your fathers, may you be admitted into the heavenly paradise to partake of the water of life and the tree of immortality.[40]

Washington replied with this letter:

To the Hebrew Congregation of Newport, Rhode Island.

Gentlemen:—While I have received with much satisfaction your address, replete with expressions of esteem, I rejoice in the opportunity of assuring you that I shall always retain a grateful remembrance of the cordial welcome I experienced in my visit to Newport from all classes of citizens.

The reflection on the days of difficulty and danger, which are passed, is rendered the more sweet from the consciousness that they are succeeded by days of uncommon pros-

perity and security. If we have the wisdom to make the best use of the advantage with which we are now favored, we cannot fail under the just administration of a good government to become a great and happy people.

The citizens of the United States of America have the right to applaud themselves for having given to mankind examples of an enlarged and liberal policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of as if it were by the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support.

It would be inconsistent with the frankness of my character not to avow that I am pleased with your favorable opinion of my administration and fervent wishes of my felicity. May the children of the stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other inhabitants, while everyone shall sit in safety under his own vine and fig-tree and there shall be none to make him afraid. May the Father of all mercies scatter light and not darkness in our paths and make us all in our several vocations useful here and, in His own due time and way, everlastingly happy.[41]

This letter was considered sufficiently important to be included in the "Freedom Train" exhibit of national documents selected by the Library of Congress, which made a deep impression when sent around the country in the summer of 1947 by co-operation of the American Heritage Foundation and the Federal government.

Similar letters were exchanged between the Hebrew congregation in Savannah and the president, and between him and the congregations of Philadelphia, New York, Richmond, and Charleston. The last-named, the joint address of the Jewish citizens of four cities on the Eastern seaboard, dated December 30, 1790, is the first indication I have noted of the effect of the union of the states in broad corporate action among American Jews.[42] This was nearly a century before the formation of the Union of American Hebrew Congregations in 1873, and of the Central Conference of American Rabbis organized in 1889.[43]

Jefferson and Madison showed the same tolerant and sympathetic spirit as Washington in their attitude toward the Jews. On May 28, 1818, Jefferson wrote the following letter to Rabbi Mordecai M. Noah:

Sir: I thank you for the discourse on the consecration of the synagogue in your city, with which you have been pleased to favor me. I have read it with pleasure and instruction, having learnt from it some valuable facts in Jewish history which I did not know before. Your sect, by its sufferings, has furnished a remarkable proof of the universal spirit of religious intolerance inherent in every sect, disclaimed by all while feeble, and practised by all when in power. Our laws have applied the only antidote to the vice, protecting our religious as they do our civil rights, by putting all men on an equal foot-

ng. But more remains to be done; for although we are free by the law, we are not so in practice; public opinion erects itself into an inquisition, and exercises its office with as much fanaticism as fans the flames of an auto de fé. The prejudice still scowling on your section of our religion, although the elder one, cannot be unfelt by yourselves; it is to be hoped that individual dispositions will at length mold themselves to the model of the law, and consider the moral basis on which all our religions rest as the rallying point which unites them in a common interest; while the peculiar dogmas branching from it are the exclusive concern of the respective sects embracing them, and no rightful subject of notice to any other. Public opinion needs reformation on that point, which would have the further happy effect of doing away with the hypocritical maxim of "intus ut lubet, foris ut moris." Nothing, I think, would be so likely to effect this, as to your sect particularly, as the more careful attention to education which you recommend, and which, placing its members on the equal and commanding benches of science, will exhibit them as equal objects of respect and favor. I salute you with great respect and esteem.[44]

Madison wrote in connection with the same occasion. He said that he

ever regarded the freedom of religious opinions and worship as equally belonging to every sect, and the secure enjoyment of it as the best human provision for bringing all either into the same way of thinking, or into that mutual charity which is the only substitute. . . .[45]

Similarly in August, 1820, Madison wrote to Dr. De La Motta of the Savannah synagogue:

Sir: . . . The history of the Jews must forever be interesting. The modern part of it is, at the same time, so little generally known, that every ray of light on the subject has its value.

Among the features peculiar to the political system of the United States, is the perfect equality of rights which it secures to every religious sect. And it is particularly pleasing to observe in the good citizenship of such as have been most distrusted and oppressed elsewhere a happy illustration of the safety and success of this experiment of a just and benignant policy. Equal laws, protecting equal rights, are found, as they ought to be presumed, the best guarantee of loyalty and love of country; as well as best calculated to cherish that mutual respect and good-will among citizens of every religious denomination which are necessary to social harmony, and most favorable to the advancement of truth. The account you give of the Jews of your congregation bring them fully within the scope of these observations.[46]

In an address delivered by the rabbi of the Jewish synagogue in New York in 1818—Rabbi Noah, already mentioned—there is an interesting statement of the conditions of the Jews at that time. Of the estimated 7,688,000 in the world, only three thousand were in the United States, nearly two thousand more than at the beginning of the Revolution. He expressed profound appreciation for the

blessings of American liberty, and added regarding his coreligionists that "their occupations and education being the same as those of other citizens, generally, they mix and commingle without any distinction."[47]

The few Jews in America in colonial and Revolutionary times had been mainly Sephardim, of Spanish and Portuguese origin, or from Holland, where they had also inherited cultural traditions. From 1820 on, the second wave of Jewish immigration, that of German Jews, began, becoming heavy in the two decades before the Civil War. They and their coreligionists in Poland were Ashkenazim Jews. This immigration was continued until the closing decades of the century, when the Jewish immigrants were coming mainly from Russia and eastern and southeastern Europe. It was clear that the Jews had come to stay, and that they were capable of rendering important contributions to American life. They congregated especially in the cities, where some made large fortunes in commerce. In these places they built dignified synagogues. It was to the head of the one in Savannah, Georgia, that Thomas Jefferson wrote from Monticello on September 1, 1820:

> Th^{s}. Jefferson returns his thanks to Doct^{r}. de la Motta for the eloquent discourse on the Consecration of the Synagogue of Savannah which he has been so kind as to send him; it excites in him the gratifying reflection that his own country has been the first to prove to the world two truths, the most salutary to human society, that man can govern himself, and that religious freedom is the most effectual anodyne against religious dissension: the maxim of civil government being reversed in that of religion, where it's true form is "divided we stand, united we fall." he is happy in the restoration, of the Jews particularly, to their social rights, & hopes they will be seen taking their seats on the benches of science, as preparatory to their doing the same at the board of government he salutes D^{r}. de la Motta with sentiments of great respect.[48]

Conditions were developing auspiciously for the integration of Jews into American life, but probably no one in the Revolutionary period ever envisioned the time when they would form such a large and important element in our population as they do today. There were, however, still two or three states, notably North Carolina and Maryland, where there were constitutional restrictions designed to prevent their holding office, but generally, where men of standing were concerned, these were not strictly observed. A notable instance was that of Jacob Henry, a respected member of the legislature of North Carolina. In 1809 an attempt was made to have his seat declared vacant on the ground that he was a Jew, but the attempt failed, largely because of the effective speech he made in his own behalf.[49] He took the ground that any provisions in the state constitution inconsistent with its bill of rights must be considered as annulled—a basic argument of broad application. It was not until 1835 that a new

constitution, ratified the next year, did away with the Protestant requirement for officeholding, which affected Catholics and Jews alike, and not until 1868 that some minor disabilities involving Jews were removed. One of the causes of difficulty here and elsewhere was the old English common-law doctrine, that practically made no one but a Christian a competent witness.[50]

Section 3. THE BATTLE FOR POLITICAL RIGHTS IN MARYLAND

It was in Maryland that the most bitter and most instructive American struggle for religious liberty for the Jews took place. As part of the constitution adopted in 1776 there was, as was customary at the time, a Declaration of Rights. This included the following important articles affecting religion.

XXXIII. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any [particular] ministry; yet the Legislature may, in their discretion, lay a general and equal tax, for the support of the Christian religion; leaving to each individual the power of appointing the payment over of the money, collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county: but the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the church of England forever. And all acts of Assembly, lately passed, for collecting monies for building or repairing particular churches or chapels of ease, shall continue in force, and be executed, unless the Legislature shall, by act, supersede or repeal the same: but no county court shall assess any quantity of tobacco, or sum of money, hereafter, on the application of any vestrymen or church-wardens; and every encumbent of the church of England, who hath remained in his parish, and performed his duty, shall be entitled to receive the provision and support established by the act, entitled "An act for the support of the clergy of the church of England, in this Province," till the November court of this present year, to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish, and performed his duty.[51]

XXXIV. That every gift, sale, or devise of lands, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination—and

every gift or sale of goods, or chattels, to go in succession, or to take place after the death of the seller or donor, or to or for such support, use or benefit—and also every devise of goods or chattels to or for the support, use or benefit of any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, without the leave of the Legislature, shall be void; except always any sale, gift, lease or devise of any quantity of land, not exceeding two acres, for a church, meeting, or other house of worship, and for a burying-ground, which shall be improved, enjoyed or used only for such purpose—or such sale, gift, lease, or devise, shall be void.[52]

XXXV. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office, as shall be directed by this Convention, or the Legislature of this State, and a declaration of a belief in the Christian religion.[53]

XXXVI. That the manner of administering an oath to any person, ought to be such, as those of the religious persuasion, profession, or denomination, of which such person is one, generally esteem the most effectual confirmation, by the attestation of the Divine Being. And that the people called Quakers, those called Dunkers, and those called Menonists, holding it unlawful to take an oath on any occasion, ought to be allowed to make their solemn affirmation, in the manner that Quakers have been heretofore allowed to affirm; and to be of the same avail as an oath, in all such cases, as the affirmation of Quakers hath been allowed and accepted within this State, instead of an oath. And further, on such affirmation, warrants to search for stolen goods, or for the apprehension or commitment of offenders, ought to be granted, or security for the peace awarded, and Quakers, Dunkers or Menonists ought also, on their solemn affirmation as aforesaid, to be admitted as witnesses, in all criminal cases not capital.[54]

These clauses have been given in full both because of their direct bearing on Jewish rights, and because of their interest as indicating a transition attitude between the old policy of an established Christian Church—the Episcopal—and complete religious freedom. Full freedom was not secured until the nineteenth century was well advanced.

In the course of this historical transformation the Episcopal Church was treated more generously than in Virginia, being allowed to continue in possession of its churches and chapels, as well as of its glebes and other property. It was also given a favored status some twenty years later by the passing of the Vestry Act (1798).[55]

The point to which special attention must here be called is that the articles of the Bill of Rights quoted above give the legislature the power to lay "a general and equal tax, for the support of the Christian religion," and that "a declaration of a belief in the Christian religion" was made a requirement for "any office of trust or profit" under the state. These provisions were naturally considered by the Jews prejudicial to their basic rights and interests in a free state.

Only one serious effort was made, however, to enforce the tax—in 1785—and it was defeated.[56]

Efforts had been made in 1797 to have the disqualification against Jews holding office removed, but these were without effect. They were repeated in subsequent years. Yet it was a generation before they succeeded by the final adoption of the "Jew Bill" in 1826, and it was, as we shall see, not until the middle of the century that a constitutional revision provided a clause specifically forbidding all religious discriminations.

The struggle for religious liberty in Maryland produced several heroes whose names have been almost forgotten. The most important of these is Thomas Kennedy (1776–1832).[57] He was a devout Christian of Scotch Presbyterian stock who felt that the discrimination against Jews in the constitution of the state, by limiting officeholding to Christians, was inconsistent with American ideals of religious liberty and with the spirit of Christianity. Americans should be grateful to E. Milton Altfeld, who has told the inspiring story, with all the necessary documents, in *The Jew's Struggle for Religious and Civil Liberty in Maryland*.

Kennedy came to this country as a boy with his immigrant parents from Scotland. He was a profound admirer of Thomas Jefferson's contributions to the cause of liberty, both political and religious. His character was singularly pure and unselfish, and his speeches are marked by great devotion to the Christian religion and its Founder. Indeed, his arguments for religious liberty for the Jews were based fully as much on the teachings of Christianity as on the ideals embedded in American Constitutional history. He was elected in 1817 as a delegate to the Assembly, and on December 9 of the following year he introduced a resolution for the appointment of a committee to consider the justice and expediency of "placing the Jewish inhabitants on an equal footing with the Christian."[58]

The two other members of the committee were, we are told, won over by him to his point of view and became strong supporters of his bill. They were Judge H. M. Breckinridge, who made one of the most eloquent and forceful appeals in behalf of the proposal, and Ebenezer S. Thomas (1775–1845). The committee, headed by Kennedy, presented for consideration "An Act To extend to the sect of people professing the Jewish religion, the same rights and privileges that are enjoyed by Christians." The report prepared by Kennedy took the ground that religion is purely a personal matter between the individual and his God, and that no human tribunal can take cognizance of it.

The committee appointed to consider "the justice and expediency of extending to persons professing the Jewish religion, the same privileges that are en-

joyed by Christians," took the matter into "their serious consideration," and reported on December 21, 1818:

That with respect to the justice of the case submitted to their consideration, your committee thinks there can be no question: in society, mankind have civil and political duties to perform, but with regard to religion, that it is a question which rests, or ought to rest, between man and his Creator alone; there is no law can reach the heart—no human tribunal that has a right to take cognizance of this matter.

But, taking this subject up in a religious point of view, your committee would appeal with confidence to the authority of the Christian religion itself, contained in the gospel, and the epistles, as a system that instead of persecution and proscription, breathes in every sentence and in every line, peace and good will to all mankind. . . .

It is in the interest and it ought to be the wish of every religious sect among us to see all political distinction forever abolished. Under the Constitution of the United States, the most perfect freedom is allowed in this respect, and it is surely inconsistent, it is surely strange, that a Jew who may hold a seat in Congress, who may even be raised to the highest and most honorable station in the universe, the chief magistrate of a free people, cannot hold any office of profit or trust under the Constitution of Maryland. . . .[59]

The wording of the proposed bill to remedy the discrimination against Jews was as follows:

WHEREAS, it is the acknowledged right of all men to worship God according to the dictates of their own conscience. And whereas, it is declared by the 36th Section of the bill of rights of this state, "That the manner of administering an oath to any person ought to be such as those of the religious persuasion, profession, or denomination of which such person is one, generally esteem the most effectual confirmation by the attestation of the divine Being." And whereas, religious tests for civil employment, though intended as a barrier against the depraved, frequently operate as a restraint upon the conscientious; and as the Constitution of the United States requires no religious qualification for civil office, therefore,

Sec. 1. Be it enacted, By the General Assembly of Maryland, that no religious test, declaration or subscription of opinion as to religion, shall be required from any person of the sect called Jews, as a qualification to hold or exercise any office or employment of profit or trust in this state.

Sec. 2. And be it enacted, That every oath to be administered to any person of the sect of people called Jews, shall be administered on the five books of Moses, agreeably to the religious education of that people, and not otherwise.

Sec. 3. And be it enacted, That if this act shall be confirmed by the General Assembly, after the next election of delegates, in the first session after such new election, as the constitution and form of government direct; that in such case this act and the alteration and amendments of the constitution and form of government therein contained, shall be taken and considered, and shall constitute and be valid as part of

the said constitution and form of government, to all intents and purposes, any thing in the declaration of rights, constitution and form of government contained, to the contrary notwithstanding.

Sec. 4. And be it enacted, that the several clauses and sections of the declaration of rights, constitution and form of government, and every part of any law of this state, contrary to the provisions of this act, so far as respects the sect of people aforesaid, shall be, and the same is hereby declared to be repealed and annulled on the confirmation hereof.[40]

The question was then put by the Speaker: "Shall the Bill pass?" Mr. Kennedy opened the debate. "Mr. Speaker," he said,

It is with feelings of no ordinary kind, that I now rise to address this honourable house; the Bill which we are called to decide upon, is, in my estimation, the most important that has yet come before us; the most important that will come before us during the present session.

And, if I am asked why I take so much interest in favour of the passage of this Bill—to this I would simply answer, because I consider it my DUTY to do so. There are no Jews in the county from whence I come, nor have I the slightest acquaintance with any Jew in the world. It was not at their request; it was not even known to any of them, that the subject would be brought forward at this time.

And if there is any merit in bringing the case of these oppressed people before this house, that merit does not belong to me; I wish not to enjoy honours that I do not deserve, nor wear laurels that I have not earned. The subject was mentioned to me in Baltimore during the last session, not by a Jew, but by a Gentile gentleman. My situation was then like that of many of the people of Maryland . . . [I was faced with] a subject indeed that had never until that time occupied a moment's reflection in my mind; but the moment it was mentioned, I was convinced that such distinctions were wrong and that they ought to be abolished forever.

It is well known to most of the members of this House that I am not a public speaker. Never before the last session of the Legislature did I ever venture to address a public assembly; yet although I know little of law and less of logic, and although I am master of no language but that which my mother taught me, on this occasion I am not afraid to meet any opponent, let his talents, learning and eloquence be what they may; and even if my frail vessel should meet with a storm, or suffer shipwreck on this voyage, I see many a friendly hand around me, who will not suffer the unskillful pilot to perish.

There is only one opponent that I fear at this time, and that is PREJUDICE—our prejudices, Mr. Speaker, are dear to us, we all know and feel the force of our political prejudices, but our religious prejudices are still more strong, still more dear; they cling to us through life, and scarcely leave us on the bed of death, and it is not the prejudice of a generation, of an age or of a century, that we have now to encounter. No, it is the prejudice which has passed from father to son, for almost eighteen hundred years. . . .[41]

Farther on in his address Mr. Kennedy said:

> . . . There are few Jews in the United States; in Maryland there are very few, but if there was only one—to that one, we ought to do justice. I have already observed that I have no acquaintance with any of them, but I have good authority for saying, that those among us are worthy men, and good citizens; and during the late war, when Maryland was invaded, they were found in the ranks by the side of their Christian brethren fighting for those who have hitherto denied them the rights and privileges enjoyed by the veriest wretches. . . .[62]

The matter came to a decision in January, 1819, when the proposal to grant the Jews of Maryland the same rights long enjoyed by Christians, was defeated by a vote of 50 to 24.

In 1820 it was defeated again in the Assembly by a vote of 47 to 20. To show his deep disappointment at this debate Kennedy wrote his poetic address "To the Children of Israel in Baltimore." The poem does not rank high in literary merit, but it shows a feeling of deep sympathy for the Jews. Incidentally, its author was rather what would be called today a Zionist, looking forward to the establishment of the Jewish nation in Palestine with Jerusalem as its center. Here are some extracts:

> Why does short-sighted man still make pretence,
> Laws to prescribe for high Omnipotence?
> Usurp the powers that to I AM belong,
> And in Jehovah's name do open wrong?
> O, why will man thus sin against the light?
> Who made the heart, alone can judge aright;
> And every heart is in his mighty hand,
> Turns at his will—obeys at his command. . . .
>
> I blush for Christians that they should forget,
> The Golden Rule—their great Law-giver set,
> That they the precious precept should condemn,
> Which their ador'd Redeemer taught to them—
> Do unto others—as you'd wish they'd do
> In the same situation unto you—
> And those this just command who disobey,
> Seek not for Heaven in the true Christian way. . . .
>
> Your sufferings and your persecution tends
> To increase the zeal and number of your friends,
> They will increase until your feeble foes,
> Your claims to justice shall no more oppose. . . .[63]

When Kennedy returned to his home in Washington County his action in introducing his bill to remove the disqualification of Jews from officeholding was violently attacked. He was assailed as "an enemy of Christianity"; he was called Judas Iscariot; it was asserted that he was "one half Jew and the other half not a Christian."[64]

In 1822 his bill finally passed the House of Delegates, but under the laws of the state confirmatory action at a subsequent session was necessary for any modification of the constitution. Consequently, the proposal became the major issue in the election of 1823. In concluding his speech on January 10 of that year, Kennedy made one of his most eloquent appeals in behalf of the bill. Among other things he said:

For the present then I will pause to hear what others have to say. A few short years, Mr. Speaker, you and I and all who now hear me must leave this transitory scene. Let us then pass this bill, let us pass it unanimously. We will never repent, even on a dying pillow. It will comfort us to think that we have done at least one good act in our lives, that we have been instrumental in establishing religious freedom in Maryland, that we have broken the yoke of superstition and prejudice and let the oppressed go free, and that we have caused happiness to many an anxious heart.

Lay old superstition low,
Let the oppressed people go,
To the bill let none say no,
Aye unanimously.[65]

Before the debate which followed, a memorial was presented by Jewish citizens. The opening paragraph and a characteristic section follow:

Your Memorialists are of that class of the Citizens of Maryland, long subjected to the pressure of political disqualifications, by the operation of a religious test in the Constitution of the State; and they approach your Honorable Body with this their prayer, that an Act passed the 29th of January 1823 "to extend to all the citizens of Maryland the same civil rights and religious privileges that are enjoyed under the Constitution of the United States," may be confirmed by the present session, becoming thereby part of the Constitution.

Your Memorialists, feeling it incumbent on them at this stage of the proceeding, address themselves on the subject, to your Honorable body, in the honest confidence, which the American is educated to entertain in his fellow citizens, and in the legislative guardians of his rights. It is not their wish to obtain from your honorable body, a grant of exclusive privilege; because such a privilege would be hostile, not only to the principles of our institutions, but to the express provisions of that charter which we have all alike, sworn to support; but it is equal rights which they petition; their voice is not raised in favor, but in opposition, to exclusive privilege; they ask an equality of rights with their fellow citizens. . . . Are their doctrines immoral? They

are the foundation of the general faith. Are they dangerous? It is no part of them to work conversions. Are they new? Ancient as the revelation of Almighty truth. Your Memorialists, with all humility, are at a loss to understand what there is so peculiarly exceptionable in these their tenets, as to have induced a solitary, but persevering departure, from the sublime system of our American political jurisprudence: why even at this moment, when the whole American pulse throbs with indignation at the civil and religious proscriptions, renewed and asserted in the old world, the good people of Maryland alone, should find it necessary or expedient, to continue for a moment, the disqualifications of any class of their fellow Citizens. Your Memorialists beg leave to remind your Honorable Body, that the honors of office in our happy Republic, are not assumed, but conferred; not usurped by guilty ambition, but bestowed directly or indirectly, by popular confidence; that to disqualify any class of your citizens, is for the people to disqualify themselves; can it be necessary, can it be wise or politic at this day, for the people to disqualify themselves on the score of opinion only, from consulting merit in the selection of their public servants? . . .[66]

Violent opposition to the bill was renewed, especially in the Protestant "religious" journals, which stated that there was a death struggle on between orthodox Christianity as represented by the provisions in the old constitution, and the "Unitarian views" presented by Mr. Kennedy. The proposed amendment failed to receive the necessary confirmatory vote.

In Kennedy's home county a so-called "Christian ticket" was now put into the field, with one Benjamin Galloway as a candidate in opposition to the earnest advocate of Jewish political freedom. Galloway frankly proclaimed that he wanted only Christian support, not that of "Jews, Deists, Mohammedans, or Unitarians."[67] He published a manifesto in the *Washington County Herald,* appealing for the defeat of the "Jew Bill" and of its advocates—Kennedy and his associates.

To the Christian Voters of Washington County, State of Maryland:

Highly respected fellow-citizens:

Venienti Occurrite Morbo.

Oppose the threatened disorder.

I am as decidedly opposed now to the confirmation by the next General Assembly, as I was during the late session of the present one, to the passage of the Act, which has been published for your serious consideration, bearing on its front the insidious title "an act to extend to all the citizens of Maryland the same civil right and religious privileges that are enjoyed under the Constitution of the United States."

Messrs. Thomas Kennedy, Kellar and Drury, who zealously supported said act, at the last session, have lately presented themselves to your view in public prints, as candidates for your votes at the approaching election, with sanguine expectations (no doubt) of success. It was not, believe me, fellow-citizens, my intention to have again appeared before you as a candidate for a seat in the General Assembly, having arrived

at the advanced age of three score years and ten; but, as to retreat at so very important a crisis might be considered by you as desertion, should you be disposed to elect me as one of your delegates to the next General Assembly, I will most unquestionably serve as such, and I will, in that event, vote in point blank opposition to the confirmation, as I did at the late session, to the passage of said (in my judgment) highly exceptionable act; and which I hold to be no more nor less than an attempt to undervalue, and, by so doing, to bring into popular contempt, the Christian religion.

Preferring, as I do, Christianity to Judaism, Deism, Unitarianism, or any other sort of new fangled ism, I deprecate any change in our State government, calculated to afford the least chance to the enemies of Christianity, of undermining it, in the belief of the people of Maryland. What could not heretofore be effected by Hooke, it seems, is now attempting to be done by Crooke.

Yours respectfully,
BENJAMIN GALLOWAY.
Hagerstown, Washington County,
Maryland, Aug. 18, 1823.[68]

As a result of the prejudice created by Galloway's campaign, Mr. Kennedy was defeated for re-election. Some of the most representative newspapers in the state expressed deep regret at the result. In the forthcoming session, when Kennedy was not a member of the House, the bill was again defeated, by a vote of 44 to 28, though the Senate, all of whose members Kennedy had interviewed in the meantime, passed the bill 8 to 6. This latter fact gave him encouragement to run as an independent candidate, which he did in the next year's campaign, and won.

The matter had now become something of a national issue. Papers all over the country, North and South, called on Maryland to redeem itself and put the state in line with the American tradition of equality of Jew and Christian in all political rights. For example, *Niles Register*, of Baltimore, then one of the most influential of American journals, under date of February 25, 1825, said:

Another attempt is being made in the Legislature of this State to relieve the Jews of the political disqualification to which they are now subjected by the Constitution. Surely, the day of such things has passed away and it is abusive of common sense, to talk about republicanism, while we refuse liberty of conscience in matters so important as those which have relation to what a man owes his Creator, as to the articles of his religious faith. But in Maryland . . . the doctrine promulgated by the Congress of '76, that all men are created free and equal is constitutionally pronounced to be false—because that it is artificial, whereby one man, in one county, may have ten times the political weight of another man, in an adjoining county. If the free citizens of the State were represented in the Legislature, this fragment of the barbarous ages, in respect to the Jews, would soon be stricken from the Constitution of the State.[69]

As a result of the agitation the bill passed at this session, but it required con-

firmation by a second legislature. There was another determined effort in the next session, and as a result on January 5, 1826, the necessary confirmatory vote was passed, the Assembly voting 45 to 32 in behalf of a bill similar to Kennedy's presented in the Senate by Reverdy Johnson (1796–1876), later one of the country's leading lawyers. It was characteristic of Kennedy, who had carried the brunt of the whole battle, that he gladly withdrew his own bill when it seemed that the cause could be better advanced by accepting the Senate substitute. The bill, having been duly passed by two legislatures as required for constitutional change, became a law in 1826. As a result of this action Jews were soon elected to office in the state. The well-known Baltimore Hebrew Congregation was now duly incorporated.

Kennedy died October 17, 1832, of Asiatic cholera, after further service in the legislature and as editor of the *Hagerstown Mail*. John Quincy Adams offered him the postmastership of Hagerstown, which he declined. A fine monument was dedicated in the local cemetery in 1919 to mark the one hundredth anniversary of the effective beginning of his efforts to secure religious freedom in the state. A plaque honoring Kennedy's memory has been erected in Mt. Sinai Hospital, Baltimore. It is worthy of note that he also was a friend of Catholic emancipation in Ireland and wrote effectively in its behalf.

The debate on Kennedy's bills in various sessions of the legislature brought out some speeches in addition to his own that deserve mention. For instance, Judge H. M. Breckinridge, another Christian, should also be remembered with gratitude for his part in the debate, even though he was apparently not interested in extending the suffrage to "the Turk or the infidel"!

. . . Sir, I contend, that . . . every citizen is entitled to all the privileges of citizenship; that the religious opinions of no one can be justly visited upon him, either directly or indirectly, as the immediate effect or the consequence of that opinion. If in consequence of my religious belief, I am subjected to disqualifications, while in other respects on a perfect equality with my fellow citizens; while there exists no reason founded upon the well-being of society, to exclude me from these common benefits, I cannot but consider myself a persecuted man.

The persecution is slight I own, but still it is persecution. It is not indeed the faggot, or the wheel, but it is applied for the same reason; it is because my opinions are not conformable to those of the more numerous or more powerful. An odious exclusion from any of the benefits common to my fellow citizens is a persecution, less in degree, but of a nature equally unjustifiable as that whose instruments are chains and torture. In this country where all can aspire to offices of honor and emolument, to be excluded from them is by no means a negative punishment. . . .

. . . The man who cannot hold the most trifling office in the state of Maryland, may be chosen to preside over its destinies, as a member of the confederacy, he may command your armies, and lead you to battle against the enemy who dares to invade your

shores; yet he cannot be an ensign or lieutenant of a company. He may sit upon the bench, and in the Federal courts be called to decide upon the fortune, or the life of the citizens of Maryland; yet he cannot be a justice of peace, to decide the most trifling controversy. He may be a juror in the circuit court of the United States, and be the arbiter of the fortunes and liberties of the first among you, and yet he cannot sit in the same box to deal out the measure of justice to the pilfering slave. He may be marshal of the district, and in that capacity entrusted with the most important concerns, at the same time that he is disqualified from performing the duties of a constable! . . .

Some remarks have fallen from gentlemen that, in my mind, go further to prove the weakness of the opposition to the bill, than even the arguments that may be urged in its support. From what other cause could it be seriously asserted that if this bill passes we may have infidels and Turks in office—we may have the processions of the Juggernaut crushing to death its wretched victims in the public highways! I will ask whether anything of the kind has yet taken place in any part of this country. . . . I have never contended that where opinions manifest themselves in acts detrimental to the peace of society that those acts ought not to be punished. But I say that as long as I keep my thoughts to myself, or their manifestation neither violates the laws nor does any injury to my neighbor, no one has a right to molest me for them. . . . It has been impressed upon my mind that the Jewish religion is divine, that we should believe in the books of the Old Testament as well as they, although we believe more than they do. We concur in the belief of what constitutes the base and foundation of Christianity; take away the foundation and where is the superstructure? . . . It has been stated that the passage of this bill is incompatible with the respect we owe to the Christian religion; that this is a Christian land—that the Christian religion ought to be legally avowed and acknowledged; that its support will be weakened by abolishing the test. Sir, I can see no disrespect offered to any system of religion, when the government simply declares that every man may enjoy his own, provided he discharges his social duties. . . . I firmly believe that it is an insult to the Christian religion to suppose that it stands in need of the temporal arm for its support. It has flourished in despite of temporal power: by the interference of temporal power alone, in its behalf, has its progress ever been retarded or its principles perverted.[70]

The bill, as we have seen, passed during the session which opened in December. Another remarkable address in behalf of fully enfranchising the Jews was delivered by John S. Tyson of Baltimore.

. . . By the constitution of our, and their country, [he said] by the constitution of human nature, are they [the Jews] entitled to those civil and religious privileges, which this bill is intended to confer upon them.

As the data upon which I found this position, I refer you to the immortal instrument which preserved to us the like privileges, when the hand of foreign domination was raised to crush them. I mean the charter of our independence. "We hold these truths to be self-evident—that all men are created equal":—the Jews are men; therefore, created your equals—but do you treat them as such? No. For you say, they are un-

worthy to sit by your side in the administration of a free government.—"And endowed with certain inalienable rights. That among these are life, liberty, and the pursuit of happiness." But you have curtailed them in their liberty—you have hindered them in their pursuit of happiness; the best of all kinds of liberty, religious liberty; and the purest of all sorts of happiness, eternal happiness. "For the preservation of these, governments are instituted among men."—But your government is instituted for their destruction. You have put them under the ban of the republic. "Deriving their just power from the consent of the governed." They never gave you power to deprive them of their civil and religious privileges. The people of Md. did not surrender to the convention who framed their constitution the right to control their consciences. They could not surrender it, because it was an inalienable right.

. . . The clause therefore, denying civil and religious freedom to the Jews, is expunged from your constitution. The bill now on your table gives to that people no new rights, it merely preserves to them rights which are immutably and inalienably theirs.

Sir, if you continue to enforce this outlawed clause of your constitution, you rear up with the hand of arbitrary power, that worst of all monsters, a religious hierachy [*sic*]. Do not the words frighten you, and yet they are true. The principles upon which you uphold even the pure Christian religion, to the exclusion of every other, are the principles which uphold the inquisitorial government of Spain, and the Episcopal hierarchy of England. The right to put up one religion, is the right to put down another—the right to put down one, is the right to put down all; and the right to put down all, is the right to build up one upon their ruins. The right to build up or pull down in one particular, involves the right to do so in all; and you may, therefore, whenever you choose it, establish a Presbyterian Church government, an Episcopalian Church government, or any other church government, upon the ruins of every other religious society; nay, upon the ruins of civil government itself. . . .[71]

The debate over Jewish constitutional rights in Maryland was in many ways one of the memorable contests of its kind in American history, ranking in significance only after the winning of such great charters as the religious-freedom provisions of the Federal Constitution,[72] the Virginia Bill for Religious Freedom,[73] and the victory for disestablishment in Connecticut in 1817–18.[74] It has been given considerable space in this volume both because of its intrinsic importance, and because most American historians have given it little or no attention.[75] Furthermore, the battle for religious freedom initiated, fought, and won by Thomas Kennedy, deserves to be better known.

In 1851 the constitution of Maryland was revised. Certain articles were adopted to take the place of the first third of Articles XXXIII and XXXV, and of the first part of XXXVI mentioned above.

Art. 33. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to him, all persons are equally entitled to protection in their

religious liberty; wherefore, no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession, or for his religious practice, unless under color of religion any man shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship or any ministry; nor shall any person be deemed incompetent as a witness or juror who believes in the existence of a God, and that under his dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come.[76]

Art. 34. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of office as may be prescribed by this constitution, or by the laws of the State, and a declaration of belief in the Christian religion; and if the party shall profess to be a Jew, the declaration shall be of his belief in a future state of rewards and punishments.[77]

Art. 35. That every gift, sale, or devise of land, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order, or denomination, or to or for the support, use, or benefit of, or in trust for any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, and every gift or sale of goods or chattels to go in succession, or to take place after the death of the seller or donor, to or for such support, use, or benefit; and also every devise of goods or chattels, to or for the support, use, or benefit of any minister, public teacher, or preacher of the gospel, as such; or any religious sect, order, or denomination, without the leave of the legislature, shall be void; except always any sale, gift, lease, or devise of any quantity of land, not exceeding five acres, for a church, meeting-house, or other house of worship, or parsonage, or for a burying-ground, which shall be improved, enjoyed, or used for such purpose; or such sale, gift, lease, or devise shall be void.[78]

Art. 36. That the manner of administering an oath or affirmation to any person ought to be such as those of the religious persuasion, profession, or denomination of which he is a member generally esteem the most effectual confirmation by the attestation of the Divine Being.[79]

In the revision of 1864 the above Article 33 was continued, but the article regarding tests or qualifications for office was modified to read:

Art. 37. That no other test or qualification ought to be required on admission to any office of trust or profit than such oath of allegiance and fidelity to this State and the United States as may be prescribed by this constitution, and such oath of office and qualification as may be prescribed by this constitution, or by the laws of the State, and a declaration of belief in the Christian religion, or in the existence of God, and in a future state of rewards and punishments.[80]

It will be noticed that under this constitution a slight distinction was still

made between Jews and Christians, though Jews were no longer mentioned by name. This was unacceptable as virtually making a difference in the law between two religious groups, and was modified in the constitution of 1867, whose Bill of Rights reads:

> That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.[81]

The constitution was now acceptable to all religious groups except the small number of agnostics and atheists.

Section 4. THE OTHER ADJUSTMENTS TO CONDITIONS UNDER NEW FEDERAL AND STATE GOVERNMENTS

The last memorable battle over Jewish political rights took place in North Carolina, where the complete emancipation of the Jews did not take effect until 1868. Up to that time a clause debarred from holding office any "person who shall deny the being of God or the Divine Authority of both the Old and the New Testament." The last portion was then eliminated.[82] The final success was due largely to the efforts of Isaac Leeser (1806–68), rabbi of the leading synagogue in Philadelphia.

A matter of special difficulty for American Jews, as they tried to adjust themselves to life in the American republic, and one in which they were specially interested, was that of the change from Hebrew to English in religious services. The first beginnings of this are found in 1824, when the Reformed Society of Israelites was established in South Carolina with the express purpose of altering customs and ceremonies so as to fit the Jewish synagogue better into American conditions. It wished to have the major part of the service, including the reading of the Bible, in English and to have English sermons. In 1830 Leeser, a rabbi of the Sephardic tradition, began preaching in English in a Philadelphia synagogue. This made a deep impression, since he was a man of broad influence. He was the founder of the Board of Delegates of American Israelites, which brought together Jews from different parts of the country; he was editor of *The Occident*, pioneer in American Jewish periodical literature. He also published in 1845 a translation of the Old Testament which became an authorized version for American Jews.[83] Although an adherent of the orthodox faith, he is classed as an enlightened conservative. It was largely due to influences stemming from his group that reform congregations were established in 1842, and in

New York (Temple Immanu-el) in 1845. These emphasized the use of English in Bible reading, preaching, and the conduct of the service.[84]

An even more independent and forceful leader was Rabbi Isaac Mayer Wise (1819–1900), who became in 1847 rabbi of a Jewish congregation in Albany, and later moved to Cincinnati, where he established *The American Israelite* and developed various plans for unifying and organizing in a progressive spirit the Jews in America. These included the Union of American Hebrew Congregations—a movement begun in 1848 but not realized until 1873—the Hebrew Union College, and the Central Conference of American Rabbis.[85] With the establishment of these institutions, and of the Independent Order of B'nai B'rith in 1843, we find leaders of "Reform Judaism" and their most representative congregations becoming well adjusted to the conditions of American life, so much so that their temples have been referred to by a Jewish leader as "churches without a cross."[86]

A decade later came a petition from Jewish citizens of Washington, D. C., requesting the passage of an act enabling them to build a synagogue in the capital. "I understand," explained Senator Lewis Cass (1782–1866), of Michigan, in presenting the petition to the Senate, on February 5, 1856, "that the existing law in this district makes provision . . . only in relation to Christian denominations. Such a distinction is an act of gross injustice, and if continued after our attention is directed to it, would be a disgrace to our jurisprudence." Senators agreed to refer the petition to the Committee on the District of Columbia, and the defect in the law was soon remedied.[87]

The Jews are now found in considerable numbers in Congress, in legislatures of states with a large urban population, and on the bench. They are also occasionally represented in the cabinet and in diplomatic service. Their attitude today on social problems in which the State is involved will be discussed in a later section.[88] They are naturally and properly sensitive in all matters involving the protection of their rights and privileges as citizens.

The "Keiley case" was probably the most important case of this character. It had to do with the appointment by President Cleveland (1837–1908) in 1885 of Anthony M. Keiley of Virginia, to be Minister to Austria-Hungary, an appointment which that government declared to be unacceptable, solely on the ground that his wife was a Jewess. As the appointment was a Federal one, that is—to quote the words of the Constitution—"under the United States," the president felt that he could not recognize the ground of the objection as valid from the standpoint of this country, and an epistolary controversy resulted. The essential facts are these: On May 4, 1885, the Secretary of State, the Honorable Thomas F. Bayard (1828–98), notified the Austro-Hungarian minister in Washington

of the president's selection of Mr. Keiley, it not being then the custom to consult a foreign government in advance of such an appointment as to whether the person chosen was *persona grata.* The following day Count Gustav Kalnóky (1832–98), representing his government as Minister of Foreign Affairs, informed its minister in Washington, Baron Schaeffer, that "The position of a foreign envoy wedded to a Jewess by civil marriage would be untenable and even impossible in Vienna." He added that "scruples against the choice prevail" there "like [*sic*] in Rome"—meaning presumably that the Church, which then had close bonds with Austria-Hungary, could not countenance in a Catholic State a minister whose marriage, from its standpoint, had no religious sanction. This fact was probably the determining one in Rome, though the Jewish connection would make the appointment doubly unacceptable in Austria. Therefore the baron informed our secretary of state that the appointment was looked upon with disfavor by his government. The resulting situation from the American Constitutional and political situation was intolerable. Consequently, Mr. Bayard wrote to Baron Schaeffer on May 18, 1885:

The question thus raised by your Government involves principles of the greatest importance, and has no precedent as yet discoverable to me in modern times and in intercourse between friendly nations; and having submitted the matter to the consideration of the President, I am instructed by him to inform your Government, through you, that the ground upon which it is announced, that the usual ceremonial courtesy and formal respect are to be withheld from this envoy of the United States to your Government, that is to say, because his wife is alleged or supposed by your Government to entertain a certain religious faith, and to be a member of a certain religious sect, cannot be assented to by the Executive of the Government of the American people, but is and must be emphatically and promptly denied.

The supreme law of this land expressly declares that "no religious test shall ever be required as a qualification to any office or public trust under the United States," and by the same authority it is declared that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

This is a government of laws, and all authority exercised must find its measure and warrant thereunder.

It is not within the power of the President nor of the Congress, nor of any judicial tribunal in the United States, to take or even hear testimony, or in any mode to inquire into or decide upon the religious belief of any official, and the proposition to allow this to be done by any foreign Government is necessarily and *a fortiori* inadmissible.

To suffer an infraction of this essential principle would lead to a disfranchisement of our citizens because of their religious belief, and thus impair or destroy the most important end which our constitution of Government was intended to secure. Religious liberty is the chief corner-stone of the American system of government, and provisions

for its security are imbedded in the written charter and interwoven in the moral fabric of its laws.

Anything that tends to invade a right so essential and sacred must be carefully guarded against, and I am satisfied that my countrymen, ever mindful of the suffering and sacrifices necessary to obtain it, will never consent to its impairment for any reason or under any pretext whatsoever. . . .[89]

Mr. Bayard in this letter also developed more in detail the religious-freedom issue involved:

The case we are now considering [he said] is that of an envoy of the United States, unquestionably fitted, morally and intellectually, and who has been duly accredited to a friendly Government, towards which he is thoroughly well affected; who in accordance with the laws of this country, has long since contracted and has maintained an honorable marriage, and whose presence near the foreign Government in question is objected to by its agents on the sole ground that his wedded wife is alleged to entertain a religious faith which is held by very many of the most honored and valued citizens of the United States.

It is not believed by the President that a doctrine and practice so destructive of religious liberty and freedom of conscience, so devoid of catholicity, and so opposed to the spirit of the age in which we live can for a moment be accepted by the great family of civilized nations or be allowed to control their diplomatic intercourse.

Certain it is, it will never, in my belief, be accepted by the people of the United States, nor by any administration which represents their sentiments. . . .

Into the religious belief of its envoy, or that of any member of his family, neither this Government nor any officer thereof, as I have shown you, has any right or power to inquire, or to apply any test whatever, or to decide such question, and to do so would constitute an infraction of the express letter and an invasion of the pervading spirit of the supreme law of this land.[90]

President Cleveland in his subsequent annual message to Congress on December 8, 1885, stated that the arguments of the Austro-Hungarian Government could not be acquiesced in, without violation of my oath of office and the precepts of the Constitution, since they necessarily involved a limitation in favor of a foreign government upon the right of selection by the Executive, and required such an application of a religious test as a qualification for office under the United States as would have resulted in the practical disfranchisement of a large class of our citizens and the abandonment of a vital principle of our Government.[91]

This statement has become classic and is frequently quoted. The president returned to discuss the fundamental issue of religious prejudice involved when called upon to speak at the two hundred and fiftieth anniversary of the settle-

ment of Jews in this country. His words on this occasion find a friendly response in the thought and feeling of every unprejudiced American:

I know that human prejudice—especially that growing out of race and religion—is cruelly inveterate and lasting. But wherever in the world prejudice against the Jews still exists, there can be no place for it among the people of the United States unless they are heedless of good faith, recreant to the underlying principles of their free government, and insensible to every pledge involved in our boasted equality of citizenship.[92]

The most authoritative information that I have found with reference to the closing of this incident has been brought to my attention by the State Department. It is in John Bassett Moore's *A Digest of International Law* (IV, 483):

August 4, 1885, Mr. Lee, Chargé d'affaires ad interim at Vienna, telegraphed that the Minister of Foreign Affairs had declared that he could not receive Mr. Keiley, and had asked that the United States appoint another Minister. Mr. Keiley, on being advised of the action of the Austro-Hungarian Government, resigned the mission.

These protests did credit to our government, and the statements by President Cleveland and Secretary of State Bayard were to prove useful in the future.

A matter of great importance to all orthodox Jews involves the preparation of kosher food. The courts have been called upon to see that food labeled as "kosher," that is food that may be eaten, has been selected, killed, prepared, and inspected under laws involving rabbinic supervision which Jews consider essential under their ancient dietary regulations designed out of kindness to animals and out of due regard for hygienic principles. So many abuses had developed in New York City that in 1936 a conference was held at the instigation of fifty orthodox ministers. It was largely attended by poultry men and others interested, and a lay mediator was appointed by the mayor. As a result a satisfactory solution was reached, and the Rabbinical Board of Greater New York issued a decree involving, among other things, the appointment of a seal fixer and the adoption of stricter regulations regarding slaughtering and the sale of kosher, the decree being duly supported by a union of ritual slaughterers.

A Jewish association was empowered by charter to enforce compliance with the state kosher laws through the prosecution of offenders. A poultry corporation brought legal action against the association on a charge of conspiracy with the duly authorized Rabbinical Board and Slaughterers Union to interfere with the corporation's rights by allegedly obtaining religious edicts prohibiting orthodox Jews from buying and the corporation from selling ritually killed fowl which did not have the necessary seal as recently provided for.

The case is a complicated one. It is important for our purposes mainly because the court denied the plaintiff's demand for the annulling of a contract, and for an injunction with damages. In other words the court supported the Jewish rabbis, who were the ecclesiastical judicatory in the matter, as final if there had been no flagrant violation of Jewish law, and consequently their control of kosher was continued.[93]

Other questions involving Jewish adaptation to American conditions and laws will be discussed later, such as Sunday laws,[94] the political activities of Jews in this country regarding Zionism,[95] their efforts to protect their co-religionists abroad,[96] and anti-Semitism.[97]

No group of people in America is more appreciative of the religious liberty which they enjoy here than the Jews. As an evidence of this the Jewish Society of B'nai B'rith commemorated the one hundredth anniversary of the Declaration of Independence by presenting an allegorical group representing religious liberty to the city of Philadelphia. It is the work of a well-known American Jewish sculptor, Moses Ezekiel (1844–1917), and is opposite the east entrance of West Fairmount Park in Philadelphia. The group—originally prepared for the Centennial Exhibition—is of marble, the pedestal and statue being about twenty-five feet high. A female figure in armor represents Liberty. A mantle fastened at the neck falls from the left arm, which is uncovered. On the breastplate are wrought the arms of the United States. The Phrygian cap of liberty, bordered with thirteen stars, is on the head of the figure. In the left hand is held the Constitution, supported by fasces. Religion is represented as a youth, slightly draped, with his face upturned to Liberty. One hand is stretched to heaven, holding an urn in which burns the sacred flame. At the base of the group an eagle is represented with its talons buried in a serpent—signifying the destruction of slavery.[98] The monument may not be of the highest artistic distinction, but its conception and symbolism are worthy of the important ideal it represents.

NOTES

Chapter I

1. For a brief survey of Canadian Church–State Relations, see Brown, William A., *Church and State in Contemporary America,* Appendix IV.
2. XXVII, 1.
3. Bryce, James, *The American Commonwealth* (1889 ed.) II, 582, 583.
4. *Atlantic Monthly,* Aug. 1923.
5. Committee on Religious Life in the Nation's Capital, *Report of First Year's Work and Plans,* pp. 35, 39.
6. I, 4.
7. *Oxford English Dictionary,* "Church"; *cf.* sections 4, 13, 14.
8. *Book of Common Prayer,* Offices of Instruction, Second; *cf.* XIX of the Articles of Religion: "The visible Church of Christ is a congregation of faithful men, in the which the pure Word of God is preached and the Sacraments be duly ministered according to Christ's ordinance, in all those things that of necessity are requisite to the same."
9. For a valuable discussion of the meaning of the Church today, see Visser't Hooft, W. A., and Oldham, J. H., *The Church and Its Functions in Society* (1937).
10. Temple, William, *Church and Nation,* pp. 26–28.
11. Bryce, *op. cit.,* II, 559.
12. Hobbes, Thomas, *Leviathan* (1651 ed.), p. 88.
13. Quoted by H. W. Baehr, Jr., in "Bill of Rights of the United States," *International Conciliation,* p. 26.
14. I, 2, (4).
15. *Cf.* interesting discussion in Sheen, Fulton J., *Liberty, Equality, and Fraternity,* p. 8 *ff.*
16. Spencer, Herbert, *Social Statics* (abridged and revised 1892), p. 36.
17. Edman, Irwin, and Schneider, Herbert W., *Fountainheads of Freedom,* pp. 416, 417.
18. Acton, Lord, *History of Freedom and Other Essays,* p. 3, and p. xxix.
19. Spinoza, "A Theologico-political Treatise," in *Works of Benedict de Spinoza* (trans., introd. by R. H. M. Elwes, rev. ed., London, 1900), I, 258 *f.*
20. Milton, "On the Detraction," etc.
21. VIII, 2.
22. *N. Y. Herald-Tribune,* Jan. 7, 1941.
23. Espec. VIII, 2; IX, 1; XVIII, 1, (3); XIX, 5, (2); and XXII, 1.
24. *Cf.* the old definition of Florentinus: *Libertas est naturalis facultas eius, quod cuique facere libet, nisi si quid vi aut jure prohibetur;* quoted by Jellinek, Georg, *The Declaration of the Rights of Man and of Citizens,* p. 43.
25. XXII, 1; XVIII, 8; etc.
26. Quoted from Maritain, Jacques, *The Rights of Man and Natural Law,* p. 117.
27. *Christian Century,* June 23, 1948; *cf.* XXIII, 4, (1); also for background, III, 1, (6) and XII.
28. Bates, *op. cit.,* p. 302.
29. Finkelstein, *op. cit.,* introd.
30. *Ibid.*
31. Art. "Catholic and Patriot: Governor Smith Replies," *Atlantic Monthly,* May, 1928, p. 728.
32. *Cf.* Sturzo, Luigi, *Church and State,* p. 541.
33. Ruffini, *op. cit.,* p. 4; *cf.* p. 5.
34. Frothingham, Richard, *The Rise of the Republic of the United States,* p. 413 (footnote).

35. XXVII, 2.
36. Art. "Liberty: Roman or Protestant," in *Churchman*, Nov. 15, 1947.
37. Ruffini, *op. cit.*, pp. 1, 2.
38. Corrigan, Raymond, *The Church and the Nineteenth Century*, p. 301.
39. Webster, *op. cit.*
40. De Ruggiero, art. "Religious Freedom," *Enc. Soc. Sci.*, XIII, 240.
41. Art. "Huguenots," *Enc. Brit.* (11 ed.), XIII, 867.
42. Ruffini, *op. cit.*, p. 9.
43. Trans. from Vermeersh, *Die Toleranz*, p. 6, quoting *Discours et opinions de Mirabeau* (Barthe ed.), I, 328; *cf.* Ruffini, *op. cit.*, p. 9.
44. Wiernik, Peter, *History of the Jews in America*, p. 116, and Kohler, Max, "Phases," etc., A. J. H. S. *Proceedings* No. 11 (1903), p. 56.
45. Paine, Thomas, *The Rights of Man*, p. 58, quoted by Cobb, Sanford H., *Rise of Religious Liberty in America*, p. 9.
46. Snow, Charles M., *Religious Liberty in America*, p. 236.
47. Art. "Toleration," *Enc. Brit.*, XXVI, 1052.
48. Brooke, Stopford A., *Life and Letters of Frederick W. Robertson*, p. 274.
49. *Bloom* v. *Richards* (2 Oh. St. 387, 390), quoted from *Corpus Juris*, XII, 942.
50. De Ruggiero, *op. cit.*, p. 239.
51. Garrison, Winfred Ernest, *Intolerance*, pp. xi, xii.
52. *Ibid.*, chap. III, pp. 25–31.
53. Dexter, F. B., *Sketch of the History of Yale University*, p. 9.
54. IV, 8, (10).
55. III, 3, (3).
56. For an able presentation of this position see Dr. C. C. Morrison's art. on "Church, State and the Constitution," *Christian Century*, Sept. 1, 1948.
57. Sturzo, *op. cit.*, p. 561.
58. Ruffini, *op. cit.*, p. 16.
59. Morrison, Charles C., "Getting Down to Cases," *Christian Century*," Dec. 10, 1947.
60. XIX, 5, (2), and XVIII, 1, (3).
61. Art. "Establishment," *Enc. Brit.*, IX, 787.
62. V.
63. Corrigan, *op. cit.*, p. 308.
64. See XXII, 5.
65. III, 3, (1).
66. XIX, 2, (1); XX, 3; XXIII, 4, (1).
67. XX, 7, (2).
68. VI, 9.
69. *Diario da Manhã*, Lisbon, May 8, 1940; provided by Legation of Portugal in U. S.
70. *Miami Military Institute* v. *Leff* (129 Misc. 481, 220 N.Y.S. 799, 810), quoted by Zollmann, Carl, *American Church Law*, p. 17.
71. Lieber, Francis C., *Liberty and Self Government* (Philadelphia, 1852), X, 99. A new ed. of this important volume was published in 1874.
72. Bryce, *op. cit.*, II, 554.
73. *Ibid.*, p. 566.
74. *Ibid.*, pp. 560, 561.
75. III, 3, (3), (5).
76. IV, 8, (10), (11).
77. Luzzatti, Luigi, *God in Freedom*, p. 9.
78. Quoted by Lefkowitz, David, "The American Principle of the Separation of Church and State," *Central Conference of American Rabbis Yearbook*, XLII, 188.
79. Luzzatti, *op. cit.*, p. 50.
80. For a good survey of the situation in Canada and other countries, see Bates, M. Searle, *Religious Liberty; An Inquiry*.
81. See XXVI, 7.
82. XX, 6, (1), (3).
83. Moehlman, Conrad H., *The American Constitutions and Religion*, p. 20.
84. *Cf.* Van Deusen, H. P., *et al.*, *Church and State in the Modern World*, pp. 3–10.
85. For the interesting development of this historical background, see Schaff, Philip, *Papers of the American Historical Association*, II, No. 4, published in 1888 in connection with the centenary of the American Constitution.
86. Maitland, Frederic W., *Collected Essays*, III, 438, quoted by Cardozo, Benjamin, *The Nature of the Judicial Process*, p. 54.

87. Rom. 13.1–7; *cf.* I Tim. 2.2.
88. *Cf.* Figgis, J. N., *Churches in the Modern State, passim.*
89. Milman, Henry H., *History of Latin Christianity*, VII, 104. I owe this quotation to Bishop Henley Henson's *Christian Morality*, Gifford Lectures for 1936–1937, p. 249.
90. For interesting discussion, see Acton, Lord, *op cit.*, pp. 357–367.
91. *Cf.* comments in Maitland, Frederic W., and Pollock, Frederick, *History of English Law*, I, 134, quoted by Ryan, John A., and Millar, Moorhouse F. X., *The State and the Church*, p. 110.
92. XIV, 11.
93. III, 1, (8) and (9).
94. Figgis, *op. cit.*, p. 47.
95. *Ibid.*, pp. 214, 215.
96. Scott, William, ed., *The Works of William Laud*, I, 5, 6.
97. Tawney, *Religion and the Rise of Capitalism* (1926), p. 175.
98. Henson, *op. cit.*, p. 249.
99. Sturzo, *op. cit.*, p. 528.
100. *Enc. Brit.*, XIII, p. 673, art. "Richard Hooker."
101. Hooker, *The Laws of Ecclesiastical Politie* (1622 ed.), Book 1, Sec. 9.
102. Barrington, Mrs. Russell, ed., *The Works and Life of Walter Bagehot*, VI, 222, 234–235.
103. *Ibid.*, p. 235.
104. *Enc. Soc. Sci.*, XIII, 240, art. "Religious Freedom"; *cf.* Ruffini, *op. cit.*, p. 252.
105. *Ibid.*, p. 515.
106. *Ibid.*, pp. 516, 517.
107. V, 3, (4).
108. Quoted by Figgis, *op. cit.*, p. 56.
109. Burke, Edmund, *Works* (Bohne ed.), II, 378, quoted by Barker, E., in his notes to Gierke, Otto F. von, *Natural Law in the Theory of Society*, p. 370.
110. De Ruggiero, *op. cit.*, p. 240.
111. Quoted by Ryan and Millar, *op. cit.*, p. 118.
112. See especially U. S. Constitution, Amendment X of Bill of Rights.

NOTES

Chapter II

1. *World Almanac* (1947).
2. XXIV, 5, (4).
3. *World Almanac* (1948), pp. 573, 574.
4. *Religious Bodies. 1936 Selected Statistics* [U. S. Religious Census] (1941), p. 111.
5. The significance of the Federal Religious Census as an example of Church–State co-operation, and the limitations of that taken in 1936, will be considered in a later section, XXIV, 5, (4). Here we are concerned merely with what the *Census of Religious Bodies* of 1936, as supplemented by the statistics collected for 1940 by the *Yearbook of American Churches* (1941) and later studies, shows as to church members in different denominations in this country, and a consideration of their significance from the standpoint of Church–State relations.
6. *Yearbook*, p. 37.
7. Computed from figures given in the *Yearbook of American Churches* (1940), pp. 129–135.
8. Some of these figures are estimates.
9. Of this inclusive membership, 7,377,487 are in "The Methodist Church," the newly consolidated body comprising most of the important Methodist denominations.
10. *Yearbook*, pp. 129, 133.
11. *Ibid.*, p. 136.
12. In most cases estimated.
13. *Yearbook* (1945); *cf. Information Service*, Dec. 15, 1945.

14. Brown, W. A., *op. cit.*, p. 104.
15. See Hooker, Elizabeth R., *United Churches* (1926), pp. 23–25.
16. *Religious Bodies*, pp. 8, 14.
17. *Information Service*, Jan. 1, 1944; *cf. Christian Century*, Feb. 9, 1944. The Church of God with headquarters in Anderson, Ind., is to be distinguished from these sects.
18. *Religious Bodies*, Table 3. The *Yearbook of American Churches* does not give the state classifications.
19. *Ibid.*, Table 3.
20. Including a very small number of adherents of Ethical societies, Orthodox Churches, Oriental cults, etc.
21. *Religious Bodies, passim.*
22. XI, and XXIII, 4.
23. *World Almanac* (1943), p. 462.
24. *Ibid.*, p. 465.
25. *Ibid.*, p. 462.
26. *Ibid.*, pp. 473, 474.
27. For discussion of different attitudes, see XXIII, 4.
28. Bryce, *op. cit.*, II, 554.
29. Art. IV, sec. 4.
30. *Religious Bodies* gives 4,641,184 in Jewish congregations.
31. Gen. 1.26.
32. See Witt, Louis, *Judaism and Democracy.*

NOTES

Chapter III

1. See appendix.
2. Gabel, Richard J., *Public Funds for Church and Private Schools*, p. 552.
3. *Cf.* Matthew 15.6; 19.7; Mark 7.8, 9, Mark 10.19.
4. Straus, Oscar S., *The Origin of Republican Form of Government in the United States of America*, p. 86.
5. Sidney, Algernon, *op. cit.*, II, Sec. 9; quoted by Straus, *op. cit.*, pp. 113, 114.
6. VI, 5.
7. Edman and Schneider, *op. cit.*, p. 10.
8. *Ibid.*, p. 13.
9. Plutarch, *Against Colotes the Epicurean*, 31, sec. 1135E.
10. VII, 4.
11. Firth, C. H., in preface to Borgeaud, Charles, *The Rise of Modern Democracy in Old and New England*, p. vi.
12. *Cf.* IV, 8, (3), (10).
13. *Writings of Jefferson* (Monticello ed.), XV, 481–482; *cf.* I, 266, 269.
14. Rowland, Kate Mason, *Life of George Mason*, II, 114, quoting the original manuscript.
15. *The Dialogues of Plato, Apology*, trans. Jowett, I, p. 326.
16. *Ibid.*, pp. 327, 328.
17. *Ibid.*, p. 329.
18. *Ibid.*, pp. 324, 333.
19. Ruffini, *op. cit.*, p. 20.
20. *Writings of Thomas Jefferson* (Monticello ed.), XV, 65–66.
21. *Ibid.*, XVI, 118–119.
22. *Works of John Adams*, IV, pp. 14–15.
23. Article "Stoics," in *Enc. Brit.*, especially sections on Cosmopolitanism and Religion, XXV, 947.
24. Article "Stoicism," by Ernest Barker, in *Enc. Soc. Sci.*, XIV, 407, 408.
25. III, 1, (5).
26. Gal. 3.28.
27. Edman and Schneider, *op. cit.*, p. 40.
28. *Cf.* XXIV, XXVII.
29. Whitehead, Alfred North, *Adventures in Ideas*, pp. 18, 20.
30. Acts 15; *cf.* Gal. 5.2, 6.15.
31. Acts 17.28.
32. Edman and Schneider, *op. cit.*, p. 39.
33. *Ibid.*, p. 29.

34. Romans 8.21.
35. 2 Cor. 3.17.
36. Gal. 5.1.
37. *Op. cit.*, 5.13.
38. *Op. cit.*, 2.4.
39. Col. 3.11.
40. *Dictionary of the Apostolic Church*, I, 697.
41. Whitehead, *op. cit.*, p. 18.
42. Votaw, Clyde, quoted by High, Stanley, *The Church in Politics*, p. 16.
43. *Tracts on Liberty of Conscience and Persecution, 1614–1661*, pp. 249–252, quoting Eusebius, *Ecclesiastical History*, Book X, chap. 5.
44. Edman and Schneider, *op. cit.*, p. 34.
45. Ruffini, *op. cit.*, p. 29.
46. *Ibid.*, p. 18.
47. XXIII, 4, (1).
48. XII, 6, and XVI, 14.
49. Ruffini, *op. cit.*, pp. 23, 24; *cf.* pp. 25, 37.
50. *Ibid.*, p. 36.
51. For the contribution of Marsilius, see *ibid.*, p. 43, footnote 1.
52. Edman and Schneider, *op. cit.*, p. 53.
53. See under A.D. 413 in table of dates.
54. *The City of God*, trans. Principal Marcus Dods, II, 53.
55. *Ibid.*, II, 54.
56. *Ibid.*, II, 326, 327.
57. *Ibid.*, II, 328.
58. For the evidence: pro, see *Cath. Hist. Rev.*, Oct., 1917, article by Gaillard Hunt; con, see Schaff, David S., *The Bellarmine–Jefferson Legend* (1927).
59. Quoted by Hunt, Gaillard, "The Virginia Declaration of Rights and Cardinal Bellarmine," *Cath. Hist. Rev.*, III, 287.
60. *Ibid.*, Filmer's italics.
61. Article "Bellarmine," *Cath. Enc.*, II, 411.
62. Hunt, *op. cit.*, III, 289.
63. Guilday, Peter, *Life and Times of John Carroll*, p. 243.
64. Wheaton, John F. "The Great 'Preamble,'" *Commonweal*, July 6, 1945.
65. Acton, *The History of Freedom* (1922 ed.), p. 33.
66. See XV, 1, espec. note 6.
67. Lecky, William E. H., *Democracy and Liberty*, II, 92.
68. Quoted from Smith, Bernard, ed., *The Democratic Spirit*, p. 640.
69. Sullivan, Helen, article "Franciscan Movement," *Enc. Soc. Sci.* VI, 414.
70. Art. "Authority," *Cath. Enc.*, II, 138.
71. Aquinas, *Summa*, I–II, Q. XCIV.
72. Art. "Heresy," *Cath. Enc.*, VII, 256.
73. For an interesting summary to which I am indebted, see art. "Aquinas" by Msgr. John A. Ryan, *Enc. Soc. Sci.*, II. For his attitude toward democracy, see also E. F. Murphy, *St. Thomas' Political Doctrine and Democracy.*
74. For good summary, see art. "Gallicanism," *Cath. Enc.*
75. *Cf.* table of dates, under 1781.
76. Art. "Febronianism," *Cath. Enc.*, V.
77. Eckhardt, *op. cit.*, p. 268.
78. *New Cath. Dict.*, p. 362.
79. Sturzo, Luigi, *The Catholic Church and Christian Democracy* (1944). This stimulating study was published as the May number of *Social Action.*
80. See earlier in this section, and VI, 3.
81. XXIII, 4, (1) end.
82. XVI, introd.; XXVII, 1.
83. Art. "Religious Freedom," *Enc. Soc. Sci.*, XIII, 241.
84. *Persecution and Liberty, Essays in Honor of George Lincoln Burr* (1931), chap. on "The Attitude of Erasmus Toward Toleration," p. 176.
85. *Ibid.*, p. 180.
86. *Ibid.*, chap. on "Sebastian Castellio," pp. 183–205.
87. Art. "Conscience," *New Cath. Dict.*
88. Ruffini, *op. cit.*, p. 56.
89. Gal. 5.1.
90. Bainton, Roland H., "The Struggle for Religious Liberty," *Church History*, X (June, 1941), 95–96, citing *Epistolarum Theologicarum Theodori Bezae Vezelii, Liber Unus* (Geneva, 1575), p. 20. *Est enim hoc mire diabolicum dogma, Sinendum esse unumquemque ut si volet pereat.* See also Harold Laski's *The Defense of Liberty against Tyrants.*
91. Bainton, *op. cit.*, pp. 98–99.

92. Whipple, Edwin P., *The Great Speeches and Orations of Daniel Webster*, p. 143.
93. The 39 Articles still published in the English *Prayer Book* are largely Calvinistic.
94. Smith, Preserved, *Age of the Reformation*, p. 174.
95. XI, 2.
96. XI, 1.
97. Troeltsch, Ernst, *Social Teaching of the Christian Churches*, II, 617.
98. Froude, J. A., *Calvinism*, p. 43.
99. Tawney, R. H., *Religion and the Rise of Capitalism* (1926), p. 119.
100. See Walker, Williston, *John Calvin, The Organizer of Reformed Protestantism*.
101. McSorley, Joseph, *An Outline History of the Church by Centuries*, p. 678, quoting Christopher Dawson's article on "The Religious Origins of European Disunity," *Dublin Review*, Oct., 1940.
102. Tawney, *op. cit.*, pp. 118, 119.
103. Calvin, John, *Institutes of the Christian Religion* (first American, from the last London ed., Philadelphia, 1816), III, 229.
104. *Ibid.*, III, 518, 519.
105. *Ibid.*, III, 541.
106. *Ibid.*, III, 542.
107. *Ibid.*, III, 551.
108. Ruffini, *op. cit.*, p. 506.
109. *Cf. ibid.*, p. 94.
110. *Cath. Enc.*, III, 197.
111. Bonet-Maury, Gaston, *Histoire de la liberté de conscience en France* (Paris, 1900), pp. 82, 83.
112. *Writings of Washington* (Bicent. ed.), XXVIII, 242, 243.
113. *Ibid.*, XXIX, 349.
114. *Cf.* Niebuhr, H. R., *Social Sources of Denominationalism*, p. 29.
115. Campbell, Douglas, *Puritan in Holland, England, and America*, II, 202.
116. Mochlman, Conrad Henry, *The Catholic-Protestant Mind*, p. 102, citing McGlothlin, W. J., *Baptist Confessions of Faith*, p. 82.
117. *The Baptist Encyclopedia* (rev. ed., 1883), II, 698, 699, citing Busher's work (1846 ed.), pp. 23, 24.
118. *D.N.B.* (Concise Vol.) under Busher.
119. III, 3, (3), (4); IV, 8, (4), (17).
120. See Smith, C. Henry, *The Story of the Mennonites* (1941).
121. Carlyle, A. J., *The Christian Church and Liberty*, p. 116.
122. III, 3, (5).
123. Schaff, Philip, *Creeds of Christendom*, III, 797.
124. Ruffini, *op. cit.*, p. 90.
125. *Ibid.*, p. 99.
126. Borgeaud, *op. cit.*, p. 117.
127. Schaff, *op. cit.*, III, 720.
128. Troeltsch, *op. cit.*, II, 671.
129. See Campbell, Douglas, *op. cit.*, II, p. 325.
130. Sweet, W. W., *Religion in Colonial America*, p. 186.
131. *Ibid.*, p. 187.
132. See III, 1, (11), (6).
133. Ruffini, *op. cit.*, p. 100.
134. III, 1, (16).
135. Ruffini, *op. cit.*, p. 106.
136. See especially Campbell, *op. cit.*, chap. XVI.
137. For the influence of Penn, Hooker, and Madison, see III, 3, (1), (5); IV, 8, (11).
138. See especially III, 3, (1).
139. *Letters and other Writings of James Madison* (1865), III, 274, 275
140. Morley, John, *Oliver Cromwell*, pp. 441, 442.
141. Art. "Oliver Cromwell," *Enc. Brit.*, VII, p. 493.
142. *Ibid.*
143. Morley, *op. cit.*, pp. 121, 122.
144. *Ibid.*, p. 190; *cf.* p. 186.
145. *Enc. Brit.*, VII, 490.
146. Abbott, William Cortez, *The Writings and Speeches of Oliver Cromwell*, II, p. 146.
147. Morley, *op. cit.*, p. 347.
148. Quoted by *Enc. Brit.*, VII, 493.
149. *Ibid.*, VII, 492.
150. Ruffini, *op. cit.*, p. 501.
151. Art. "Separation of Church and State" in *Christian Century*, Mar. 3, 1948.
152. Edman and Schneider, *op. cit.*, pp. 286, 287.
153. *Ibid.*, p. 290.
154. *Ibid.*, pp. 290, 291.

155. *Ibid.*, p. 67. For enlargement of Winstanley's views, see his *Law of Freedom* . . . (1652).
156. Borgeaud, Charles, *The Rise of Modern Democracy in Old and New England*, p. 71.
157. Pattison, Mark, *Milton*, pp. 82, 83.
158. *The Poetical Works of John Milton* (Brydges ed.), VI, 118, Sonnet XVIII.
159. *Ibid.*, VI, 117, Sonnet XVI.
160. Edman and Schneider, *op. cit.*, p. 333.
161. *Poetical Works, op. cit.*, VI, 118, Sonnet XVII.
162. Pattison, *op. cit.*, pp. 152, 153.
163. Kuhns, Oscar, *The German and Swiss Settlements of Colonial Pennsylvania*, p. 26.
164. IV, 2, and VI, 2.
165. Force, Peter, *American Archives*, I, 933–934; *cf. Journals of Congress*, XI, 108–117.
166. Art. "Switzerland, Ecclesiastical History," *Cath. Enc.*, XIV, 363.
167. Ruffini, *op. cit.*, p. 229.
168. See, for longer extract, III, 1, (2).
169. III, 1, (9).
170. VIII, 4.
171. Art "Magna Carta," *Enc. Brit.*, XVII, 317.
172. *Ibid.*, XVII, 315.
173. Art. "Magna Carta," *D.A.H.*, III, 324.
174. Art. "Bill of Rights," *Enc. Brit.*, III, 944.
175. Art. "English History," *ibid.*, IX, 542.
176. Wells, William V., *Life and Public Services of Samuel Adams*, pp. 504–505.
177. Art "Scotland, Church of," *Enc. Brit.*, XXIV, 463.
178. The Habeas Corpus Act of 1679 had also its important influence on the Bill of Rights, but had no direct relation to religious freedom.
179. *Journals of the Continental Congress, 1774–1789*, I, 67–69.
180. Ruffini, *op. cit.*, pp. 122–132, gives a good analysis.
181. XXVI, 7.
182. Edman and Schneider, *op. cit.*, p. 376.
183. *Ibid.*, p. 379.
184. Ruffini, *op. cit.*, p. 378.
185. Edman and Schneider, *op. cit.*, p. 86.
186. Barr, Mary-Margaret H., *Voltaire in America 1744–1800* (Johns Hopkins Press, Baltimore, 1941), p. 19.
187. *Ibid.*, p. 24.
188. *Ibid.*, p. 119.
189. *Ibid.*, p. 78.
190. *Ibid.*, p. 115.
191. *Ibid.*, p. 100.
192. *Amer. Hist. Review*, July, 1943, p. 694.
193. III, 1, (3).
194. St. Gregory the Great, *Exp. Mor.*, XXI, 15, quoted by Carlyle, *op. cit.*, p. 43.
195. Maritain, Jacques, *The Rights of Man and Natural Law*, pp. 59, 60.
196. Becker, Carl, "What is Still Living in the Political Philosophy of Thomas Jefferson," *Amer. Assn. of Univ. Profs.' Bulletin*, Dec., 1943.
197. For a philosophical discussion of the subject, the reader is referred to *Man and the State*, by Professor William Ernest Hocking of Harvard University (New Haven, 1926), and especially to Chapter XXVIII on "The State, The Church, and Conscience."
198. *Journ. Cont. Cong.* (ed. Gaillard Hunt), XXIV, 283.
199. See for this and other references, Haines, C. G., *Revival of Natural Law Concepts*, cited from Moehlman, C. H., *School and Church*, p. 50.
200. Edman and Schneider, *op. cit.*, pp. 402, 403.
201. *Cf.* Beard, Charles A. and Mary R., *op. cit.*, p. 730.
202 III, 1, (9).
203. Edman and Schneider, *op. cit.*, p. 340.
204. See chart in Paget, Very Rev. Francis, *An Introduction to the Fifth Book of Hooker's Treatise of the Laws of Ecclesiastical Polity*, opp. p. 99.
205. *Ibid.*, p. 107.
206. Schaff-Herzog, *Encyclopaedia of Religious Knowledge*, II, 1018.
207. See Curti, Merle, "The Great Mr. Locke," *Huntington Library Bulletin* (Apr., 1937), No. XI, pp. 107–151.
208. Sabin, Joseph, *A Dictionary of Books Relating to America*, X, 422, 423.
209. Locke, John, *Letters Concerning Toleration* (1765), p. 33.
210. *Ibid.*, p. 35.
211. *Ibid.*, pp. 36, 37.

212. *Ibid.*, pp. 37, 38.
213. *Ibid.*, p. 38.
214. *Ibid.*, pp. 40, 41.
215. *Ibid.*, pp. 44, 45.
216. *Ibid.*, pp. 47, 48.
217. *Ibid.*, pp. 51, 52.
218. *Ibid.*, pp. 58, 59.
219. *Ibid.*, p. 59.
220. *Ibid.*, p. 60.
221. *Ibid.*, p. 62.
222. *Ibid.*, p. 63.
223. *Ibid.*, p. 52.
224. V, 4.
225. Wells, W. V., *The Life and Public Services of Samuel Adams*, I, 502–503.
226. Hunt, Gaillard, "The Virginia Declaration of Rights and Cardinal Bellarmine," in *Cath. Hist. Rev.*, III, 283, quoting Sidney's *Discourses*.
227. *Ibid.*, III, 281, citing pp. 37, 38 of the *Memoirs*.
228. III, 1, (6).
229. VI, 3.
230. IV, 8, (10); V, 3, (5); XXVI, 7.
231. XI, 1; XXIII, 4, (3).
232. See Bready, J. Wesley, *England Before and After Wesley*.
233. McSorley, *op. cit.*, p. 751, note 68.
234. Mecklin, John M., *The Story of American Dissent*, p. 34.
235. *American Church Hist. Series*, XII, 215, 216, quoting Bowden, James, *History of the Society of Friends in America*, I, 309–326.
236. See III, 1, (9).
237. Andrews, Charles M., *The Colonial Period in American History: The Settlements*, I, 372.
238. "The Mayflower Compact," in Commager, Henry Steele, ed., *Documents of American History* (New York, 1935), I, 15–16.
239. See XX, 9, (2).
240. See enactment "by publick consent of the freemen of this society of New Plymoth," Jan. 1, 1632–33, *Plymouth Colony Records*, I, 5.
241. Weigle, Luther A., *American Idealism*, p. 38.
242. *Ibid.*
243. Benét, S. V., *Western Star*, p. 21.
244. Professor Evarts Greene, in Brown, W. A., *op. cit.*, Appendix I, pp. 304, 305.
245. *Cf.* Cobb, *op. cit.*, p. 133 *ff.*
246. *Massachusetts Colonial Records*, I, 87.
247. Sweet, W. W., *Religion in Colonial America*, p. 88.
248. *Records of The Governor and Company of the Massachusetts Bay . . .* ed. Nathaniel B. Shurtleff, Vol. III, 1644–1657, p. 236.
249. *Ibid.*, p. 240.
250. *Cf.* Sweet, *op. cit.*, p. 97.
251. Borgeaud, Charles, *The Rise of Modern Democracy . . .*, p. 140.
252. *Ibid.*, p. 114.
253. Allison, William Henry, *Inventory of Unpublished Material for American Religious History in Protestant Church Archives and other Repositories* (1910).
254. *Ibid.*, pp. 88, 89.
255. Beecher, Lyman, *Autobiography*, I, 259.
256. V, 6, 7.
257. III, 3.
258. *Cf.* Feuerlicht, Morris, *Judaism's Influence in the Founding of the Republic, passim*.
259. *Mass. Hist. Soc. Proc.*, LXII, 279–280, quoted by Sweet, *op. cit.*, p. 85.
260. Eliot, Samuel A., ed., *Pioneers of Religious Liberty in America*, p. 63.
261. *Ibid.*
262. Ward, Nathaniel, *The Simple Cobler of Aggawam in America*, quoted by Mode, Peter G., *Source Book and Bibliographical Guide for American Church History* (1921), p. 78.
263. *Ibid.*, p. 79.
264. Robinson, John, *Works*, I, 40, quoted by Brace, Charles Loring, *Gesta Christi*, p. 443.
265. Winthrop, John, *Antinomianism . . .*, *The Short Story and Other Documents*, ed. C. F. Adams, pp. 150, 151.
266. III, 3, (1).
267. Allison, W. H., *op. cit.*, p. 2.
268. V, 6.
269. III, 3, (3).
270. III, 3, (4).
271. IV, 3, 4.
272. See Baldwin, Alice M., *New England*

Clergy in the American Revolution, passim.

273. Letter from Rev. W. J. Brown of Manchester, Vt., quoting diocesan, parochial, and town records.
274. Mode, Peter G., *op. cit.*, p. 9, quoting Hening, W. W., *Statutes at Large*, I, 67–75.
275. Brown, W. A., *op. cit.*, Appendix I, p. 304. But see III, 4, (3), (4), and XI, 3.
276. Amer. Jewish Hist. Soc. *Publications*, No. 11, p. 62.
277. See IV, 8, (11); V, 3, (4), (5).
278. Rives, William C., *Life and Times of Madison*, I, 634–640, quoted by Amer. Jewish Hist. Soc. *Publications*, No. 11, p. 64. See IV, 8, (11), V, 3, (4).
279. Cobb, *op. cit.*, pp. 74–132, 362–398, 418–421.
280. Philipson, David, *The Jew in America*, p. 31; *cf.* conditions in South Carolina, in sketch of Charles Pinckney, IV, 8, (12).
281. III, 4, (4).
282. II, 1.
283. Brown, W. A., *op. cit.*, Appendix I, p. 306. The Carolinas were also originally under a group of proprietors, who sold all but a small part of their land to the king in 1729.
284. See Cobb, *op. cit.*, pp. 301–418, 440–453.
285. *Flushing Tercentenary*, 1645–1945, p. 1. For later account of dedication, see *N. Y. Times*, Oct. 11, 1945.
286. Stokes, I. N. Phelps, *The Iconography of Manhattan Island*, IV, 242.
287. Sweet, William Warren, *The Story of Religion in America*, p. 134.
288. Schroeder, Theodore, *Constitutional Free Speech Defined and Defended*, pp. 48–51, quoting statutes.
289. Sweet, William Warren, *Religion in Colonial America*, p. 323.
290. Moehlman, *School and Church*, p. 26.
291. V, 2.
292. III, 3, (5).
293. Cobb, *op. cit.*, p. 449.
294. See under William Penn, III, 3, (5).
295. Priestley, Joseph, *Lectures on History and General Policy* (London, 1793), II, 316.
296. Livingood, Frederick G., *Eighteenth Century Reformed Church Schools*, pp. 11, 12.
297. V, 4.
298. Letter from Prof. W. W. Sweet, May 28, 1949. *Cf.* Greene, Evarts B., *Religion and the State in America*, pp. 56–60.
299. Deut. 18.11–12; Ex. 22.18.
300. Myers, Gustavus, *History of Bigotry in the United States*, Chap. III, "Witchcraft," p. 36.
301. *Ibid.*, pp. 39, 40.
302. Article "Sewall, Samuel," Appleton, *op. cit.*, V, 468.
303. IV, 8.
304. Adams, Charles Francis, ed., *Antinomianism in the Colony of Massachusetts Bay, 1636–38*, p. 13.
305. *Ibid.*, pp. 13–15.
306. Art. "Hutchinson, Anne," *D.A.B.*, IX, 436.
307. Johnson, Edward, *Wonder-Working Providence*, quoted by Rugg, Winifred King, *Unafraid: A Life of Anne Hutchinson*, p. 98.
308. Winthrop, *A Short Story*, as reprinted in Adams, Charles Francis, ed., *Antinomianism* (pp. 67–233), pp. 79, 80.
309. *Ibid.*, p. 87.
310. *Ibid.*, p. 86.
311. *Ibid.*, p. 131.
312. *Ibid.*, p. 228.
313. Adams, Charles Francis, *op. cit.*, p. 336.*
314. *Ibid.*, p. 288.
315. Winthrop, *op. cit.*, in Adams, *op. cit.*, p. 108.
316. *Ibid.*, p. 112.
317. *Ibid.*, p. 116.
318. *Ibid.*, p. 118.
319. *Ibid.*, p. 119.
320. *Ibid.*, p. 122.
321. *Ibid.*, p. 124
322. Adams, *op. cit.*, p. 381.
323. Winthrop, *op. cit.*, p. 132.
324. *Ibid.*, p. 133

* This change in form of reference here and elsewhere is necessary because Adams, *Antinomianism*, contains other documents besides *A Short Story*.

325. *Ibid.*, p. 135.
326. *Ibid.*, p. 136
327. *Ibid.*, p 139 (footnote).
328. *Ibid.*, p. 141.
329. *Ibid.*, p. 147.
330. *Ibid.*, p. 147.
331. *Aeneid*, B. I., 1, 364.
332 Winthrop, in Adams, Charles Francis, *op. cit.*, pp. 157–162.
333. *Ibid.*, pp. 164, 165.
334. *Ibid.*, p. 165.
335. *Ibid.*, p. 167.
336 *Ibid.*, p. 170.
337. *Ibid.*, p. 176.
338. *Ibid.*, p. 177.
339. *Ibid.*, p. 180. This act of banishment was repealed by the Massachusetts Legislature in 1945.
340. *Ibid.*, p. 233.
341. *Ibid.*, p. 84; *cf.* p. 176.
342. Adams, *op. cit.*, p. 284.
343. *Ibid.*, p. 329.
344. Weigle, *op. cit.*, p. 102.
345. Art. "Mary Dyer," *D.A.B.*, V, 584.
346. Edman and Schneider, *op. cit.*, p. 98.
347. Eliot, *op. cit.*, pp. 111, 112.
348. *Ibid.*, p. 117.
349. Thorpe, Francis Newton, *The Federal and State Constitutions*, I, 529–532.
350. *Ibid.*, I, 534.
351. Quoted by Sprague, William B., *Annals of the American Pulpit*, I, 36.
352. Thorpe, *op. cit.*, I, 519.
353. Coons, Paul Wakeman, *Achievement of Religious Liberty in Connecticut*, p. 2.
354. *Ibid.*, p. 13.
355. Quoted by Parrington, Vernon Louis, *Main Currents in American Thought*, I, 57.
356. V, 6.
357. Parrington, *op. cit.*, I, 59.
358. Russell, Wm. T., *Land of Sanctuary*, p. 54.
359. Browne, Wm. H., *George Calvert and Cecilius Calvert*, p. 38.
360. *Ibid.*, p. 102.
361. *Cf.* Russell, *op. cit.*, pp. 57–59.
362. *The Calvert Papers, Number One*, in Maryland Historical Soc. Publication, No. 28, p. 132; *cf.* Browne, *op. cit.*, pp. 46–47.
363. Sweet, William Warren, *Story of Religion in America*, p. 117.
364. Browne, *op. cit.*, pp. 114–115.
365. *Cf.* article "Religious Freedom," *Enc. Soc. Sci.*
366. Winsor, Justin, *Narrative and Critical Hist. of America*, III, 534. Petrie in *Church and State in Early Maryland*, p. 30, gives 6 Protestants, 8 Catholics, and 2 uncertain.
367. XIII, 3.
368. Commager, *op. cit.*, I, No. 22, pp. 31–32, quoting Browne, W. H., ed., *Archives of Maryland*, I, 244 *ff.*
369. Johnson, Gerald W., *The Maryland Act of Religious Toleration An Interpretation*, 1949. Copied from the Assembly Journal in Hall of Records, Annapolis.
370. Winsor, *op. cit.*, III, 530, 531.
371. Browne, *op. cit.*, pp. 147–148.
372. *Cf.* Ruffini, *op. cit.*, p. 274.
373. Browne, *op. cit.*, p. 124.
374. Narragansett Club *Publications*, VI, 356.
375. Easton, Emily, *Roger Williams* (Boston, 1930), pp. 168, 169, quoting, with modern spelling, *Records of the Governor and Company of Massachusetts Bay*, I, 160–163.
376. Art. "Roger Williams," *D.A.B.*, XX, 287, 288.
377. Williams, Roger, *The Bloudy Tenent, of Persecution, for cause of Conscience, discussed, in A Conference betweene Truth and Peace, Preface* (Narragansett Club *Publications*, 1st ser., III, 3, 4).
378. Luzzatti, Luigi, *God in Freedom*, p. 126.
379. *Letters of Roger Williams, 1632–1682*, in Narragansett Club *Publications*, 1st ser., VI, 278–279.
380. III, 3, (4).
381. Parrington, *op. cit.*, I, 66.
382. *Ibid.*, I, 63.
383. *Bloudy Tenent*, quoted in *ibid.*, I, 71.
384. *Ibid.*, I, 72.
385. Williams, *op. cit.*, 1, 2, quoted by Cobb, *op. cit.*, pp. 12, 13.
386. Weigle, *op. cit.*, p. 90.
387. *Letter to Major Mason* [1670], in Nar-

raganſett Club *Publications*, VI, 133 *ff.*, quoted by Parrington, Vernon Louis, *The Colonial Mind 1620–1800*, I, 57.

388. Ruffini, *op. cit.*, p. 270, footnote, with references.
389. *Cf. Bloudy Tenet*, IV, 23.
390. By Samuel Hugh Brockunier, New York, 1940.
391. For a fair and impressive statement of his achievements, see "Roger Williams and his Doctrine of Soul Liberty" by the late President Faunce, in Eliot, S. A., *Pioneers of Religious Liberty in America*.
392. Jellinek, *op. cit.*, p. 77.
393. Ruffini, *op. cit.*, p. 171.
394. III, 3, (1).
395. Bicknell, Thomas W., *The Story of Dr. John Clarke* (2d ed., [1915]), p. 77.
396. *Ibid.*, p. 103.
397. *Ibid.*, p. 96.
398. *Ibid.*, p. 141.
399. *Ibid.*, p. 124.
400. *Ibid.*, pp. 150, 151.
401. Art. "John Clarke," in Appleton, *Cyclopaedia of Amer. Biog.*, I, 634.
402. Clarke, John, *Ill Newes from New-England*, sig. A2.
403. *Ibid.*, p. 36.
404. *Ibid.*, p. 62.
405. *Ibid.*, p. 66.
406. *Ibid.*, p. 66.
407. *Ibid.*, p. 69.
408. *Ibid.*, p. 72.
409. Appleton, *op. cit.*, I, 634. quoting *Records of the Colony of Rhode Island and Providence Plantations*, I, 485–491.
410. Whipple, L., *Our Ancient Liberties*, pp. 65, 66 See V, 8, (12), note 297.
411. III, 5, (3).
412. Bicknell, *op. cit.*, title page.
413. Quoted by Sprague, *op. cit.*, VI, 26.
414. Poore, Benjamin P., comp., *Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*, II, 1594. It will be noticed that this provision is more liberal than Oglethorpe's charter for Georgia a half century later (1732), which merely provided that "there shall be a liberty of conscience allowed in the worship of God, to all persons inhabiting . . . and that all such persons, except papist, shall have a free exercise of religion." *Ibid.*, I, 375.
415. See art. "Charter of Privileges," *D.A.H.*, I, 346.
416. *Charter to William Penn, and Laws of the Province of Pennsylvania, Passed between the Years 1682 and 1700* (Harrisburg, 1879), pp. 107–108.
417. Quoted by Weigle, *op. cit.*, p. 106.
418. Quoted in "Persistent Problems of Church and State," *Amer. Hist. Rev.*, XXXVI, 261, 262.
419. Amer. Jewish Hist. Soc. *Publications*, No. 11, p. 58.
420. Sweet, W. W., *Religion in Colonial America*, p. 213.
421. *Ibid.*, p. 163, quoting Barr, Lillian M., "Status of the Churches in Pennsylvania in 1776" (unpublished Master's thesis, Univ. of Chicago, 1920).
422. Art. "Samuel Davies," in Sprague, *op. cit.*, III, 142.
423. Collins, V. L., *Princeton*, p. 59, quoted in art. "Samuel Davies," *D.A.B.*, V, 102.
424. Barnes, Albert, "Introductory Essay on the Life and Times of the Author," in *Sermons on Important Subjects by the Reverend Samuel Davies* (New York, 1841), I, xxxiii.
425. Patton, Jacob Harris, *Triumph of the Presbytery of Hanover*, pp. 19, 20.
426. Barnes, Albert, in Davies, *op. cit.*, I, xxvii.
427. Bost, George H., *Samuel Davies: Colonial Revivalist and Champion of Religious Liberty*, quoting letter of May 21, 1752. This dissertation presented for the Ph.D. degree at the University of Chicago in March, 1942, and not yet printed, has been brought to my attention in time to add some important facts to this sketch.
428. *Ibid.*, quotation by Dawson in his letter to the bishop.
429. *Ibid.*, quoting letter to Davies, 1751, Foote, William Henry, *Sketches of Virginia, Historical and Biographical*, ser. I, p. 176.
430. *Ibid.*, p. 194, quoting Bishop of London

to Doddridge, May 11, 1751, Foote, *op. cit.*, ser. I, pp. 178–180.
431. *Ibid.*, pp. 196–197.
432. Patton, Jacob Harris, *op. cit.*, pp. 16–18.
433. *Ibid.*, p. 22.
434. See footnote 427.
435. Bost, *op. cit.*, pp. 147–148, quoting *Records, op. cit.*, pp. 255, 256.
436. *Ibid.* (Bost), p. 175, quoting MS. *Journal*, Jan. 30, 1754, and Feb. 27, the latter from copy in Foote, *op. cit.*, ser. I, p. 255.
437. *Ibid.*, p. 177, quoting Foote, *op. cit.*, ser. I, entry for Nov. 18.
438. *Ibid.*, pp. 177–178, quoting Foote, *op. cit.*, ser. I, pp. 296–297. This action was taken Feb. 5, 1755.
439. *Ibid.*, p. 207.
440. *Ibid.*, pp. 213–214, quoting Samuel Davies, *Sermons* (1864 ed.), III, sermon LXX, 329–354. Text: Dan. 4.25.
441. *Ibid.*, p. 215, quoting Davies, *Sermons, op. cit.*, III, 307–328.
442. *Ibid.*, p. 218, quoting MS. Minutes of Hanover Presbytery, meeting of Sept. 27, 1758.
443. *Ibid.*, pp. 209–210, quoting letter unsigned, dated Feb. 1, 1754, Perry, *op. cit.*, pp. 408–409.
444. *Ibid.*, quoting Foote, *op. cit.*, ser. I, pp. 304–305.
445. *Ibid.*, p. 180.
446. V, 3, (5).
447. Wise, John, *A Vindication of the Government of New England Churches* (1772 ed.), p. 25.
448. *Ibid.*, p. 26.
449. *Ibid.*, pp. 27–28.
450. *Ibid.*, p. 40.
451. "Mayhew, Jonathan," Appleton, *op. cit.*, IV, 275.
452. Mayhew, *Sermons* (1748), p. 88, cited by Baldwin, *op. cit.*, p. 69.
453. *Ibid.*, p. 89.
454. Quoted by Meyer, Jacob C., *Church and State in Massachusetts*, p. 86.
455. *Ibid.*, p. 87.
456. III, 3, (3).
457. Baldwin, *op. cit.*, p. 67, note 9; *cf. A Seasonable Plea*, p. 67.
458. Riley, Isaac Woodbridge, "The Rise of Deism in Yale College," *Amer. Jour. of Theol.*, July, 1905, vol. 9, pp. 481, 482.
459. III, 4, (5).
460. Frothingham, Ebenezer, *The Articles of Faith and Practise with the Covenant that is confessed by the Separate Churches of Christ in this land;* cited by Greene, M. Louise, *The Development of Religious Liberty in Connecticut*, pp. 284, 285.
461. Frothingham, *A Key to unlock the Door, that leads in, to take a fair view of the Religious Constitution Established by Law in the Colony of Connecticut*, etc., preface; quoted by Greene, *op. cit.*, pp. 292, 293.
462. Greene, *op. cit.*, p. 297.
463. IV, 8.
464. Bolles, John R., and Williams, Anna B., *The Rogerenes* (Boston, 1904), p. 355 (*cf.* p. 389), quoting *Answer to a Book, by Benjamin Wadsworth . . .*, p. 65.
465. *D.A.B.*, XVI, 101.
466. Bolles and Williams, *op. cit.*, pp. 214, 215.
467. *Ibid.*, p. 52.
468. IV, 8, (9).
469. Bolles and Williams, *op. cit.*, p. 363.
470. *Ibid.*, pp. 391, 392.
471. Sabin, *Dictionary*, etc., II, 267.
472. Bolles and Williams, *op. cit.*, pp. 84, 85.
473. *Works of John Adams*, X, 282.
474. *Ibid.*, X, 283.
475. Sweet, W. W., *Religion in Colonial America*, p. 7.
476. Bicknell, Thomas W., *Story of Dr. John Clarke . . .*, *op. cit.*, p. 22.
477. Thorpe, *op. cit.*, I, 77.
478. X, 7; XII, 4, (4); XVII, 6, (2); XXIII, 4, (4).
479. Sweet, W W., *The Story of Religion in America*, p. 3.
480. Beard, *op. cit.* (new ed., 1924), I, 30.
481. Sweet, *op. cit.*, p. 95.
482. *Works of the Right Honourable Edmund Burke* (London, 1887), II, 120–123.
483. Osgood, Herbert L., *op. cit.*, III, p. 85.
484. Cited by Ruffini, *op. cit.*, p. 199.
485. *Cf.* Sweet, W. W., *Religion in Colonial America*, pp. 106, 107.

486. IV, 5.
487. See art. "Population," *D.A.H.* (1940).
488. For these facts, see *Yearbook of American Churches* (1939), p. 5. The unsatisfactory *U. S. Census of Religious Bodies* of 1936 gave 179,742 church edifices and 199,302 organizations. *Cf.* II, 1, and XXIV, 5, (4).
489. See his art. "Church Membership," *D.A.H.*
490. Davis, Harold E., art. "Religion, American," *ibid.*
491. *World Almanac* (1943), p. 231.
492. III, 3, (3), (5); V, 3, 5.
493. Sweet, W. W., *The American Churches*, pp. 20, 21.
494. *Cf.* Miller, John C., *Origins of the American Revolution*, pp. 186–197.
495. Sweet, W. W., *Religion in Colonial America*, p. 55.
496. Tiffany, Charles C., *History of the Protestant Episcopal Church in the United States of America* (American Church History Series), p. 268. I am indebted to Chap. XI of this book for much of the information in this section.
497 *Ibid.*, pp. 270–271.
498. *Ibid.*, pp. 76, 273.
499. Chauncy, Charles, *A Letter to a Friend, Containing, Remarks on certain Passages in a Sermon Preached by the Right Reverend Father in God, John Lord Bishop of Landaff* (Boston, 1767), p. 47, quoted by Koch, G. Adolph, *Republican Religion*, p. 192.
500. Quoted from Straus, *op. cit.*, p. 54, footnote. The letter was addressed to Rev. Jedidiah Morse.
501. *Ibid.*, p. 56; *cf.* Adams, C. F., *Life and Works of John Adams*, VIII, 184; X, 185.
502. Van Tyne, C. H., "Influence of the Clergy, and of Religious and Sectarian Forces, on the American Revolution," *Amer. Hist. Rev.*, XIX, 45, quoting Adams, *Works*, X, 288.
503. *Journal of the Honourable House of Representatives, Of his Majesty's Province of the Massachusetts Bay, New England* (1767–68), Appendix, p. 33.
504. Tiffany, *op. cit.*, pp. 274, 275.
505. *Cf.* Van Tyne, *op. cit.*, *Amer. Hist. Rev.*, XIX, 46.
506. Tiffany, *op. cit.*, pp. 275, 276.
507. *Ibid.*, pp. 276, 277.
508. Osgood, H. L., "Documents of American History," *Amer. Hist. Rev.*, VI, 499–500. A copy of this letter in the form of a broadsheet is described in Goodspeed's catalogue of *Americana* No. 374, p. 20.
509. *Ibid.*, VI, 501.
510. *Ibid.*, VI, 504.
511. *Ibid.*, VI, 504–5.
512. *Ibid.*, VI, 506.
513. *Jour. of the House of Burgesses of Virginia (1770–72)*, p. 122; *cf.* Eckenrode, *op. cit.*, p. 29.
514. Campbell, John W., *History of Virginia*, pp. 561–562, quoted by Kennedy, John P., in *ibid.*, Preface, pp. xxxi–xxxii.
515. From a sermon "On the American Episcopate," quoted by Straus, *op. cit.*, p. 56.
516. Cross, Arthur L., *The Anglican Episcopate and the American Colonies*, p. 271.
517. IV, 8, (9); *cf.* XII, 2, 3.
518. Sweet, W. W., *Religion in Colonial America*, p. 70.
519. Goodycoontz, Colin Brummitt, *Home Missions on the American Frontier*, p. 74.
520. Cobb, *op. cit.*, p. 485, quoting Allen, *Life of Edwards.*
521. Walker, Williston, *History of the Congregational Churches in the United States*, p. 261.
522. Cleveland, Catharine G., *The Great Period in the West, 1797–1805*, p. 152.
523. X, 1.
524. *Cf.* remarks of Weigle, *op. cit.*, p. 115.
525. Gewehr, Wesley M., *The Great Awakening in Virginia* (Durham, N. C., 1930), espec. chap. VIII.
526. See sketches of Samuel Davies, III, 3, (6), and John Leland, IV, 8, (13), and the study of the rise of religious liberty in Virginia, V, 3.
527. Gewehr, *op. cit.*, p. 187.
528. Figgis, *op. cit.*, p. 101.
529. Art. "Masonry," *Cath. Enc.*, IX, 773.

530. Faÿ, Bernard, *Revolution and Freemasonry 1680–1800*, p. 320, quoting Anderson, James, *The Constitutions of the Free-Masons* (1723).
531. Art. "Masonry," *Cath. Enc.*, IX, 773.
532. Faÿ, Bernard, *op. cit.*, p. 95, quoting Desaguliers, J. T., *The Newtonian System of the World, the Best Model of Government: an Allegorical Poem . . .* (London, 1728), p. iii.
533. Fay, *op. cit.*, pp. 306–307.
534. *Ibid.*, p. 310.
535. Morais, Herbert M., *Deism in Eighteenth Century America*, p. 149.
536. See Roth, Philip A., *Masonry in the Formation of our Government* (1927).
537. *Negro Year Book* (1937–38), p. 562.
538. Morse, Sidney, *Freemasonry in the American Revolution*, pp. xi–xii.
539. *Ibid.*, p. xiii.
540. Randell, Andrew L., *Masonry and Americanism*, pp. 20–21.
541. *Ibid.*, p. 22.
542. Art. "Masonry," *Cath Enc.*, IX, 773.
543. *Ibid.*, pp. 779, 780.
544. [Munsell], *Collections on the History of Albany . . .*, III, 337.
545. Art. "Masonry," *Cath. Enc.*, IX, 787.
546. *Ibid.*, IX, 775.
547. Johnson, Melvin Maynard, *The Attitude of Freemasonry toward the Roman Catholic Church*, pp. 6, 7.
548. *Ibid.*, p. 10.
549 *Ibid.*, p. 11.
550. Letter from Mr. C. under date of July 8, 1943.
551. XIV, 3.
552. III, 2, (3).
553. III, 3, (2).
554. Mahler, Raphael, *Jewish Emancipation*, pp. 11, 12.
555. *Ibid.*, pp. 14, 15.
556. III, 3, (6).
557. Bost, *op. cit.*, p. 190, quoting letter dated Whitehall, Sept. 1, 1750, quoted by Dawson in letter to Bishop of London, Aug. 16, 1751, Perry, *op. cit.*, pp. 379–380.
558. III, 1, (12); III, 2, (3).
559. See Wright, Louis B., *Religion and Empire, passim*, especially pp. vi, 34, 114.
560. Ruffini, *op. cit.*, p. 289.

NOTES

Chapter IV

1. *Journals of the Continental Congress*, I, pp. 15, 16, quoted by Blakely, William Addison, *American State Papers on Freedom in Religion* (3d rev. ed.), p. 62.
2. *Ibid.*, p. 62; quoting 4 *American Archives*, II, 1317, 1318.
3. X, 7.
4. XXVII, 2.
5. *Pennsylvania Packet*, Oct. 31, 1774, quoted by Billington, R. A., *The Protestant Crusade*, p. 17.
6. Quoted by *ibid.*, p. 17.
7. VII, 8, under Hamilton.
8. *Ibid.*
9. *Writings of Samuel Adams*, III, 213.
10. *Ibid.*, I, 201, 203.
11. Adams, John, *Works*, II, 252.
12. For these and many other contemporary statements, see Van Tyne, *op. cit.*, *Amer. Hist. Rev.*, XIX, 59–61.
13. Quoted by Guilday, *op. cit.*, p. 75.
14. Van Tyne, *op. cit.*, XIX, 64.
15. Guilday, *op. cit.*, p. 76.
16. *Journal of the Continental Congress*, I, 34–35; quoted by *ibid.*
17. Force, Peter, *American Archives*, 4th Ser., II (1839), cols. 1317–1318.
18 *Jour. Cont. Cong.* (Ford ed.), I, 72.
19. *Cf. 4 Amer. Arch.*, I, 930, and V, 411, 412, quoted by Van Tyne, *op. cit.*
20. *Jour. Cont. Cong.* (Ford ed.), I, 83, 87–88.
21. *Ibid.*, I, 117.

22. Declaration of Independence.
23. IV, 2.
24. *Cf.* Van Tyne, C. H., *The Loyalists in the American Revolution*, p. 154.
25. V, I.
26. For influence of the French philosophers, see III, 1 (16).
27. *Cf.* Koch, *op. cit.*, p. 24.
28. III, 3, (14); X, 3.
29. X, 1.
30. III, 4, (16).
31. *Prospect*, Aug. 18, 1804, p. 296, quoted by Koch, *op. cit.*, p. 110.
32. IV, 3, (8).
33. Palmer, Elihu, *Posthumous Pieces*, pp. 10–11, quoted by Koch, *op. cit.*, p. 79.
34. For a contemporary criticism of the movement, see [Ogden, John Cosens], *A View of the New-England Illuminati who are indefatigably engaged in Destroying the Religion and Government of the United States; under a feigned regard for their safety and under an impious abuse of true religion*. This was written by an Episcopal clergyman (*c.* 1740–1800).
35. See Eaton, Clement, *Freedom of Thought in the Old South*, pp. 10–16.
36. Morris, B. F., *Christian Life and Character of the Civil Institutions of the United States*, pp. 448–449, quoting *Amer. Archives*, III, 38.
37. Dexter, Franklin Bowditch, ed., *The Literary Diary of Ezra Stiles*, I, 484.
38. *Journals of each Provincial Congress of Massachusetts in 1774 and 1775* (Boston, 1838), p. 247.
39. *Ibid.*, pp. 283–284.
40 *Ibid*, p. 290.
41. XX, 6.
42. "American Army Chaplaincy—A Brief History," Prepared in the Office of the Chief of Chaplains (1946), p. 6.
43. *Writings of Washington* (Sparks ed.), XII, 401, citing *Orderly Book*, *cf.* also the orders of Aug. 3, 1776, in *ibid*, IV, 28, footnote.
44. "American Army Chaplaincy . . . ," p. 6.
45. *Ibid.*, p. 7.
46. *Revolutionary Orders of General Washington, issued during the years 1778, '80, '81, & '82* (New York and London, 1844, ed. Henry Whiting), pp. 74–75.
47. See VII, 5.
48. Art. "Immigration," *D.A.H.*, III, 74.
49. *Cf.* Weigle, *op. cit.*, p. 120.
50. These statistics are taken from the article by Professor William W. Sweet on "Church Membership," *D.A.H.*, supplemented by a letter from him in March, 1940.
51. Zollman, *op. cit.*, p. 4.
52. Hildreth, Richard, *History of the United States of America* (1851), III, 346–347.
53. For this and other quotations in this paragraph, see *ibid.*, p. 5.
54. *American Museum*, IV, 404 (Nov. 1788).
55. *Ibid.*, VIII, 42 (July, 1790).
56. *Ibid*, XI, 10 (Jan., 1792).
57. *Cf.* IX, 5.
58. *Journals of each Provincial Congress of Massachusetts in 1774 and 1775* (Boston, 1838), p. 60.
59. See Evans, Charles, *Amer. Bibliography*, No. 16559.
60. Burke, Edmund, *Speech on Conciliation with America* (Longman's English Classics), pp. 23–24; *cf.* p. 27.
61. XI, XII, XIII.
62. XXIII, 4.
63. *American Museum*, VIII, 254 (Dec., 1790).
64. Baldwin, *op. cit.*, espec. p. 183 *ff.*
65. *Cf. ibid., passim*, espec. p. 7
66. *Writings of Washington* (Sparks ed.), IX, 330, note, quoted by *ibid.*, p. 172.
67. *The Connecticut Gazette and Universal Intelligencer*, Friday, Jan. 9, 1778, XV, No. 739, p. 3.
68. *Familiar Letters of John Adams*, etc., under date of July 23, 1775.
69. Sweet, *op. cit.*, *The Story of Religion in America*, p. 250.
70. Beard, Charles A. and Mary R., *The Rise of American Civilization*, I, 259.
71. IV, 8, (2).
72. Sweet, *op. cit.*, pp. 262, 263.
73. Newman, A. H., *History of the Baptist Churches in the United States*, pp. 303, 304.
74. Sweet, *op. cit.*, p. 264.
75. Wright, Edward Needles, *Conscien-*

tious Objectors in the Civil War, pp. 29–31, quoting Kriebel, Howard Wiegner, *The Schwenkfelders in Pennsylvania, A Historical Sketch*, p. 141.

76. Wright, *op. cit.*, p. 19.
77. *Cf.* comments of Pennsylvania Lutheran pastor in 1775, in Kuhns, Oscar, *The German and Swiss Settlements of Colonial Pennsylvania*, p. 207.
78. IV, 8, (4).
79. V, 3, (2).
80. Manapoteng, Charles, "The New England Anglican Clergy in the American Revolution," *Hist. Mag. of the Prot. Epis. Church*, Dec. 1940, p. 269.
81. *Ibid.*
82. *Soc. Hist. of New York*, III, 637, quoted by Straus, Oscar, *op. cit.*, p. 59.
83. *Cf.* Guilday, *op. cit.*, p. 75.
84. IV, 2.
85. This was in 1780. Consult "The French Clergy's Gift to America," *Cath. Mind*, XVIII, 147–153, and Griffin, Martin I. J., *American Catholic Historical Researches*, II, 389–396, quoted by Guilday, *op. cit.*, p. 84.
86. IV, 8, (9).
87. *Cf.* Guilday, *op. cit.*, pp. 82, 83.
88. VI, 2.
89. Guilday, *op. cit.*, p. 115, footnote, quoting from Brent, *Biographical Sketch of the Most Rev. John Carroll, First Archbishop of Baltimore, with Select Portions of his Writings* (Baltimore, 1843), pp. 68–69.
90. XII.
91. *Jewish Enc.*, X, 654.
92. Russell, Charles Edward, *Haym Salomon and the Revolution*, pp. 301–303, quoting *Freeman's Journal* (Philadelphia), Jan. 21, 1784.
93. *Ibid.*, p. 267.
94. Thorpe, *op. cit.*, V, 3085.
95. *Ibid.*, V, 3100.
96. *Christian Century*, Dec. 24, 1941.
97. See art. "Jonas Phillips," *Jewish Enc.*
98. Art. "United States," *ibid.*, XII, 363, 364.
99. III, 1, (16).
100. Curti, *op. cit.*, p. 49.
101. VI, 5; *cf. World Almanac* (1943), p. 332.
102. IV, 8, (8).
103. Barlow, Joel, *The Columbiad*, I, 39, quoted from Curti, *op. cit.*, p. 174.
104. III, 3; see Johnson, F. Ernest, ed., *Wellsprings of the American Spirit*, chap. by Hartnett, Robert C., S.J., "Religion of the Founding Fathers."
105. XXVI, 7.
106. The Franklin Institute, *Benjamin Franklin on Religion* (Philadelphia, 1938), p. 14.
107. *Ibid.*
108. *Ibid.*, pp. 16–22.
109. *Ibid.*, p. 30
110. *Works of Benjamin Franklin* (Sparks ed.), X, 207, 208, footnote.
111. VI, 1.
112. Quoted by Kistler, C. E., *This Nation under God*, p. 83.
113. Farrand, Max, *Records of the Federal Convention of 1787*, III, 296, 297.
114. *Cf.* letter of June 19, 1764, quoted from *Works of Benjamin Franklin* (Sparks ed.), VII, 261.
115. Letter of Nov. 8, 1764, *ibid.*, VII, 269–271.
116. Bigelow, John, *Complete Works of Benjamin Franklin*, I, 477.
117. *Benjamin Franklin on Religion*, p. 23.
118. III, 4, (6).
119. Faÿ, Bernard, *Franklin, The Apostle of Modern Times*, pp. 188, 195, 210, etc.
120. *Ibid.*, p. 192.
121. *Ibid.*, p. 195. *Cf.* his letter against payment of ministers' salary by the state, IX, 1.
122. *Benjamin Franklin on Religion*, p. 39.
123. *Ibid.*
124. Livingston, Luther S., *Benjamin Franklin's Parable Against Persecution* (1916).
125. *Works of Benjamin Franklin* (Sparks ed.), VIII, 505–506, in Bigelow ed., VII, 139, 140.
126. Parton, James, *Life and Times of Benjamin Franklin*, II, 554.
127. Faÿ, *op. cit.*, pp. 162, 163.
128. See *D.A.B.*, XX, and Collins, Varnum L., *President Witherspoon*.
129. *Works of John Witherspoon*, IV, 215.
130. Collins, V. L., *op. cit.*, I, 112.

131. *Cf.* Bancroft, George, *History of the United States*, V, 125.
132. See Humphrey, *op. cit.*, p. 82.
133. Collins, *op. cit.*, I, 198.
134. *Works*, IV, 17.
135. Brant, Irving, *James Madison*, I, 102.
136. Harding, Samuel B., *Select Orations Illustrating American Political History*, p. 45
137. Collins, *op. cit.*, II, 18, 19.
138. *Works*, V, 203, 210.
139. *Ibid.*, V, pp. 265, 268.
140. *Ibid.*, IX, 178–179.
141. Morris, B. F., *op. cit.*, p. 127.
142. Morison, S. E., and Commager, H. S., *Growth of the American Republic*, pp. 122, 123.
143. Witherspoon, *Works*, IX, 202.
144. *Cf.* Hart, F. H., *The Valley of Virginia in the American Revolution*, p. 141, etc.
145. IX, 3.
146. Rowland, *op. cit.*, I, 435.
147. Nevins, Allan, *American States during and after the Revolution*, p. 432. See also Rives, William C., *History of the Life and Times of James Madison*, I, 142, note.
148. *Letters and other Writings of James Madison*, I, 24, note.
149. Rives, *op. cit.*, I, 142, 143, note.
150. Rowland, *op. cit.*, I, 441.
151. Hening, William Waller, *Statutes at Large; being A Collection of all the Laws of Virginia, from the First Session of the Legislature, in the year 1619*, IX, 164–166.
152. Rowland, *op. cit.*, I, 237, 239.
153. VIII, 2.
154. See excellent sketch by Professor William H. Allison in *D.A.B.*, I, 468, to which I am much indebted.
155. III, 3, (3).
156. Sprague, W. B., *Annals of the American Pulpit*, VI, 56.
157. Backus, Isaac, *A History of New England, with Particular Reference to the Denomination of Christians Called Baptists* (2d ed.), II, 200.
158. *Ibid.*
159. This memorial, in full, may be studied in *ibid.*, II, 204–210.
160. *Ibid.*, II, 201–202. See also Hovey, Alvah, *A Memoir of the Life and Times of Isaac Backus*, pp. 203–215, 349–351; *Works of John Adams*, II, 397–399.
161. *Cf.* Purcell, Richard J., *Connecticut in Transition*, p. 69 and *passim*.
162. Backus, *op. cit.*, II, 203, 204.
163 VIII, 1, (1).
164 Backus, *op. cit.*, II, 335.
165 *Ibid.*
166. *Debates, Resolutions and other Proceedings of the Convention of the Commonwealth of Massachusetts*, p. 182.
167. VII, 5.
168. IV, 8, (11).
169 Henry, William Wirt, *Patrick Henry. Life, Correspondence and Speeches*, I, 16.
170. V, 3, (1).
171. Henry, W. W., *op. cit.*, I, 112–116.
172. Semple, Robert B., *History of the Baptists in Virginia*, quoted by *ibid.*, I, 117, 118.
173. III, 3, (6).
174. For influence of Davies on Henry, see Henry, W. W., *op. cit.*, I, 12–16.
175 *Ibid.*, I, 317–318.
176. IV, 8, (11).
177. Quoted by Henry, W. W., *op. cit.*, I, 430, 431.
178. IV, 8, (3).
179. Elliot, Jonathan, *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution*, III, 317–318.
180. VIII, 1.
181. Elliot, *op. cit.*, III, pp. 592–593; *cf.* p. 659.
182. IX, 1.
183. Corning, Charles R., *Samuel Livermore. Address Before the Grafton and Coos Bar Association, January 6, 1888.*
184. Letter from the Director of the New Hampshire Historical Society, Concord, quoting MS. sketch by Arthur Livermore.
185. N. H. State Papers Series, Bouton, Nathaniel, ed., *Misc. Docs. and Records Relating to New Hampshire* (Concord, N. H., 1877), X, 18, quoting the *Journal* of the convention.

186. *Ibid.*, X, 17.
187. *Ibid.*, X, 18.
188. *Ibid.*, X, 16.
189. *Ibid.*, X, 15.
190. Corning, *op. cit.*, p. 43.
191. *Ibid.*, p. 44.
192. VIII, 2, (1).
193. IV, 8, (11).
194. VIII, 1, (1).
195. *Debates and Proceedings in the Congress of the United States* (Gales and Seaton), I, 759.
196. Corning, *op. cit.*, p. 46.
197. *Debates, op. cit.*, I, 771.
198. Wheeler, Daniel Edwin, ed., *Life and Writings of Thomas Paine*, II, 93.
199. *Ibid.*, II, 101–102.
200. Conway, Moncure Daniel, ed., *Writings of Thomas Paine*, I, 108–109.
201. Smith, Frank, *Thomas Paine, Liberator*, p. 109.
202. Conway, *op. cit.*, II, 325–328.
203. Quoted by Sprading, *op. cit.*, p. 74.
204. Parton, James, *Life and Times of Benjamin Franklin*, II, 552.
205. Remsburg, John E., *Thomas Paine, The Apostle of Liberty*, p. 17.
206. Smith, Frank, *op. cit.*, p. 227.
207. Woodward, W. E., *Tom Paine, America's Godfather, 1737–1809*, p. 306.
208. Cushing, Harry A., ed., *Writings of Samuel Adams* (New York, 1908), IV, 412–413, quoted by Koch, G. A., *op. cit.*, p. 136.
209. *N. Y. Times*, June 12, 1943.
210. Smith, Frank, *op. cit.*, p. 2.
211. For a favorable interpretation of Paine, including the statement that he was "a deeply religious man himself, a believer in God and immortality . . . ," see Brooks, Van Wyck, *The World of Washington Irving*, p. 74.
212. VI, 2.
213. *Writings of Benjamin Franklin* (Smyth ed.), X, 349.
214. Guilday, Peter, *Life and Times of John Carroll*, p. 201.
215. *Ibid.*, p. 326.
216. *Studies in American Church History* (1922), I, 9, 10.
217. *U. S. Cath. Miscellany*, III, 367–368, quoted by Guilday, *op. cit.*, p. 110.
218. Guilday, *op. cit.*, p. 172.
219. Shea, John Gilmary, *History of the Catholic Church in the United States*, II, 227, quoted by *ibid.*, pp. 124, 125.
220. *Concise Views*, etc., pp. 116–119, quoted by *ibid.*, p. 126.
221. Baltimore Cathedral Archives, quoted by *ibid.*, p. 210.
222. *Ibid.*, p. 220.
223. The translation given is from Shea, *op. cit.*, II, 251–256, quoted by *ibid.*
224. *Ibid.*, p. 130.
225. *Ibid.*, p. 132.
226. *Ibid.*, p. 131, citing the original undated letter to Father Arthur O'Leary in the Baltimore Cathedral Archives.
227. *Cath Enc.*, II, 239, 240.
228. *Cf.* Father Ellard's *The Catholic Mind* (1933).
229. Guilday, *op. cit.*, p. 113.
230. *Gazette of the United States*, June 10, 1789. The letter he criticized was published May 9, 1789.
231. Quoted by Guilday, *op. cit.*, p. 365. For this exchange of letters see XII, 2.
232. *Ibid.*, p. 375, and letter from Msgr. Guilday, Jan. 6, 1942.
233. Shea, *op. cit.*, pp. 371, 372, quoted by *ibid.*, p. 385.
234. *Ibid.*, p. 432.
235. Quoted by *ibid.*, p. 744.
236. Quoted by *ibid.*, p. 747.
237. Introduction to Vol. I of Fletcher's *Sermons on Various Religious and Moral Subjects* . . . (1812).
238. Quoted by Guilday, *op. cit.*, p. 819.
239. *Ibid.*, p. 824.
240. Quoted by *ibid.*, p. 828.
241. VIII, 2.
242. Will, Allen S., *Life of Cardinal Gibbons*, I, 429.
243. V, 3, (5).
244. III, 3, (3).
245. Humphrey, Edward F., *Nationalism and Religion in America*, p. 403, quoting Hening, *Statutes at Large, etc.*, XII, 84–86. For longer quotations, see IV, 4.
246. *Reynolds* v. *United States* (1878), 98 U.S. 145.
247. XXVI, 7.
248. V, 3, (5).

249. Edman and Schneider, *op. cit.*, pp. 454–456.
250. *Writings of Thomas Jefferson* (Monticello ed.), XVI, 281–282.
251. *Writings of Jefferson* (Ford ed.), VIII, 344.
252. XV, 134–135.
253. Bowers, Claude G., *Jefferson and Hamilton*, p. 103.
254. Richardson, James D., comp., *A Compilation of the Messages and Papers of the Presidents*, I, 370.
255. V, 3, (5).
256. Quoted by Hall, Thomas C., *The Religious Background of American Culture*, p. 172.
257. There is contemporary reference to this work in manuscript by a friend of Jefferson who had seen it. She describes it accurately, and adds this testimony, which is significant from one who knew him so intimately: "He always speaks of Christ as one of the greatest of reformers and wisest and best of men and his system of morals as the most pure and sublime of any ever given to man." (Smith, Mrs. Samuel Harrison, *The First Forty Years of Washington Society*, p. 315). She also refers to the fact that during the winter of 1800 before the regular Sunday services were established in the capitol Jefferson was a frequent attendant at the small Episcopal church in Washington (p. 13).
258. Quoted in article "Thomas Jefferson," *Enc. Brit.*, XV, p. 306, note 4.
259. Bruce, *op. cit.*, II, 362, 363.
260. *Ibid.*, II, 365.
261. *Ibid.*, II, 366, 369.
262. *Ibid.*, II, 367–369.
263. *Ibid.*, II, 366.
264. Moehlman, C. H., *School and Church*, p. 90, citing Washington, H. R., *Works of Thomas Jefferson*, VI, 389, VII, 267.
265. *Ibid.*, citing Honeywell, *op. cit.*, p. 256.
266. *Washington Cathedral Guide Book* (1937), p. 8. *Cf.* XXII, 3, (4).
267. See Appendix to Jefferson's *Reports of Cases Determined in the General Court from 1730–1740, and from 1768–1772*, reproduced in Cornelison, J. A., *The Relation of Religion to Civil Government in the United States*, pp. 147–155.
268. *Ibid.*, pp. 156–163.
269. Zollmann, *op. cit.*, p. 27, quoting *Works of Daniel Webster*, VI, 176.
270. Quoted by Morris, B. F., *op. cit.*, p. 35.
271. V, 3, (4); IX, 1.
272. VIII, 1, (1).
273. VIII, 2, (1).
274. Brant, Irving, *James Madison*, I, 59.
275. *Ibid.*, I, 70.
276. IV, 8, (2).
277. Hunt, Gaillard, "James Madison and Religious Liberty," Amer. Hist. Assn. *Annual Report* (1901), I, 167.
278. Brant, *Madison, op. cit.*, p. 127.
279. Hunt, Gaillard, ed., *Writings of James Madison*, I, 19.
280. *Ibid.*, I, 22–24.
281. See under Mason, IV, 8, (3).
282. Thorpe, *op. cit.*, VII, 3814.
283. Brant, Irving, *James Madison the Virginia Revolutionist*, p. 249.
284. V, 3, (5).
285. Madison, James, *A Memorial and Remonstrance*, quoted from Smith, Bernard, ed., *The Democratic Spirit*, pp. 104–110.
286. Brant, Irving, *James Madison the Nationalist* (Vol. II of life), p. 351.
287. Fleet, *Madison's "Detached Memorandum,"* in 3 *William and Mary Quarterly*, 1946, pp. 534, 551, 555; cited by Mr. Justice Black, *Everson* v. *Board of Education*, 330 U.S. 1, p. 10, note 12.
288. Rives, *op. cit.*, I, 603–605, where it is stated that the following skeleton of Madison's speech referred to above was found among his papers:

"I. Rel. not within purview of civil authority.

"Tendency of estab[t] Xnty—1. to project of uniformity. 2. to penal laws " for support[t] it.

"Progress of Gen. Asses[t] proves this tendency.

"Difference between estab[t] and tolerating error.

"True question—not Is Rel. necessy,—but

II. are Rel. Estabts necesy for Religion? No.
"1. propensity of man to Religion.
"2. Experience shews Rel. corrupted by Estabth.
"3. Downfall of States mentioned by Mr. Henry — happened, where there was estabt.
"4. Experience gives no model of Genl Asst.
"5. Case of Pa. explained—not solitary—N. J. See constn of it—R. I. —N. Y.—D.
"6. Case of primitive Xnty.
of Reformation.
of Dissenters formerly.
"7. Progress of Religious liberty.
"III. Policy—
"1. promote emigrations from State
"2. prevent immig. into it, as asylum.
"IV. Necessity of Estabt inferred from state of country.
"True causes of disease.
"1. war
"2. bad laws
} common to other states, and produce same complaints in N. E.
"3. pretext from taxes.
"4. state of administration of justice.
"5. transition from old to new plan.
"6. policy and hopes of friends of G. Asst.
"True remedies—not Estabt.—but, being out of war,
"1. Laws to cherish virtue.
"2. administration of justice.
"3. personal example—associations for Rel.
"4. By present vote, cut off hope of G. asst.
"5. Education of youth.
"V. Probable defects of Bill, when prepared.
"What is Xnty, courts of Law to decide.
"Is it Trinitarianism, Arianism, Socinianism? Is it salvation by faith or works also, &c. &c.
"Ends in what is orthodoxy, what heresy.
"VI. Dishonors christianity.
"panegyric on it, on our side.
"Decl. Rights."

289. Brant, Irving, *op. cit.*, II, 353.
290. VIII, 5.
291. *The Writings of James Madison* (Hunt ed.), V, 377–378.
292. IV, 8, (7), and VIII, 2, (1).
293. VIII, 2, (1).
294. XX, 9, (2).
295. Gales, Joseph, Sr., *Debates and Proceedings of the Congress of the United States* (Washington, 1834), I, 1106–1108.
296. *Harper's Magazine*, Mar., 1914.
297. XXII, 3, (4).
298. *Letters and Other Writings of James Madison*, III, 274.
299. Blakely, *American State Papers on Freedom in Religion*, pp. 592, 593.
300. Hunt, Gaillard, "James Madison and Religious Liberty," Amer. Hist. Assn. *Annual Report* (1901), I, 170.
301. *Ibid.*, I, 171.
302. *The Writings of James Madison* (Hunt ed.), IX, 485–487.
303. VIII, 2, (1).
304. VIII, 1.
305. VIII, 1 (the words in brackets being omitted in the final revision).
306. IX, 4.
307. E.g. "Charles Cotesworth Pinckney," in Appleton, *op. cit.*
308. Bethea, Andrew J., *Contribution of Charles Pinckney to the Formation of the American Union* (1937), p. 10.
309. *Ibid.*, p. 105.
310. *Ibid.*, p. 109.
311. VIII, 1, (1).
312. Bethea, *op. cit.*
313. *Cf. ibid.*, p. 17, and Jones, E. Alfred, *American Members of the Inns of Court*, pp. xii, 170, 171, etc.
314. *Cf.* conditions of the time as described by Mrs. Ravenel in her *Charleston the Place and the People.*
315. *Lawson's History of North Carolina* (1709, reprint of 1714 ed., 1937), p. xxvii.
316. Sprague, *op. cit.*, VI, 176.

317. V, 3, (2); VII, 5.
318. Purcell, *op. cit.*, p. 76.
319. *Cf.* tribute to Leland in *ibid.*, p. 77.
320. This and some other quotations in this section are taken from the various tributes to Leland in Sprague, *op. cit.*, VI, 174–186.
321. "Virginia Chronicle," *Works*, p. 118, quoted by Gewehr, Wesley M., *The Great Awakening in Virginia*, pp. 190, 191.
322. James, Charles F., *The Struggle for Religious Liberty in Virginia*, p. 86.
323. See *Springfield Republican*, Sept. 2, 1940.
324. III, 3, (7).

NOTES

Chapter V

1. McMaster, John Bach, *The Acquisition of the Political, Social and Industrial Rights of Man in America*, p. 9.
2. *Journal of the Continental Congress 1774–1789* (Ford ed.), IV, 342.
3. *Ibid.*, IV., 357–358.
4. See XXVI, 7, for text.
5. Jellinek, *op. cit.*, p. 2.
6. *Ibid.*, p. 3.
7. *Ibid.*, pp. 4, 5.
8. *Ibid.*, p. 14.
9. *Mémoires, correspondence et manuscrits du général, Lafayette, publiés par sa famille*, II, 47, trans. from quotation in *ibid.*, p. 18.
10. Jellinek, *op. cit.*, p. 48.
11. *Ibid.*, p. 53.
12. Eckenrode, *op. cit.*, pp. 95, 96.
13. III, 1, (4) and (16).
14. III, 3, (2).
15. III, 3, (4).
16. III, 3, (3).
17. III, 3, (5).
18. Cheney, Edward Potts, *History of the University of Pennsylvania 1740–1940* (Philadelphia, 1940), p. 23.
19. *Ibid.*, p. 35.
20. *Ibid.*, p. 43.
21. *Ibid.*, p. 32.
22. *Ibid.*, p. 123.
23. *Ibid.*
24. IX, 4.
25. Guild, Reuben Aldridge, *History of Brown University* (Providence, 1867).
26. IV, 8, (3), (6), (10), (11).
27. III, 3, (6); IV, 8, (13).
28. Roger Williams, III, 3, (3).
29. James, Charles F., *Struggle for Religious Liberty in Virginia*, p. 37, quoting Rives, *op. cit.*, I, 53. See IV, 8, (11).
30. III, 3, (6).
31. Eckenrode, *op. cit.*, p. 22.
32. IV, 8, (6).
33. Eckenrode, *op. cit.* pp. 27, 28.
34. Newman, A. H., *History of the Baptist Churches in the United States*, pp. 366, 367.
35. IV, 8, (3), (10), (11).
36. III, 3, (3).
37. Newman, *op. cit.*, p. 230.
38. *Ibid.*
39. *Ibid.*, p. 287.
40. *Ibid.*, p. 296.
41. III, 3, (3).
42. III, 3 (4).
43. IV, 8, (13).
44. James, C. F., *op. cit.*, p. 32.
45. Newman, *op. cit.*, p. 367; also Eckenrode, *op. cit.*, p. 12 *ff.*
46. Nevins, *op. cit.*, p. 432.
47. Newman, *op. cit.*, p. 367.
48. James, C. F., *op. cit.*, p. 52.
49. XI, 10; *cf.* IV, 4.
50. Hawks, *op. cit.*, p. 138.

51. Eckenrode, *op. cit.*, p. 38.
52. *Journals of the House of Burgesses* (Virginia State Library) 1773–76, p. 92, quoted by Eckenrode, *op. cit.*, p. 39.
53. V, 3 (4).
54. James, *op. cit.*, pp. 65, 66.
55. Newman, *op. cit.*, p. 367.
56. *Ibid.*
57. *Ibid.*, p. 368.
58. V, 3 (4).
59. Newman, *op. cit.*, p. 369.
60. Eckenrode, *op. cit.*, pp. 67, 68.
61. Hening's *Statutes*, X, 361, quoted by *ibid.*, p. 69.
62. Quoted by Gewehr, *op. cit.*, p. 201.
63. Petition quoted by *ibid.*, p. 200.
64. Newman, *op. cit.*, p. 369.
65. V, 3, (4).
66. Newman, *op. cit.*, p. 370.
67. *Ibid.*, p. 371.
68. *Ibid.*
69. Eckenrode, *op. cit.*, p. 119.
70. VII, 5; XI, 10.
71. Newman, *op. cit.*, p. 372.
72. Leland, John, *Works*, p. 123, quoted by Gewehr, *op. cit.*, p. 200.
73. IV, 8, (13).
74. *Writings of Jefferson* (Monticello ed.), XVI, 364.
75. III, 3, (6).
76. This summary is based on Gewehr, *op. cit.*, pp. 202, 203. For full petition, see Johnson, Thomas Cary, *Virginia Presbyterianism and Religious Liberty*, pp. 65–69.
77. Eckenrode, *op. cit.*, p. 46.
78. Blakely, W. A., *American State Papers Bearing on Sunday Legislation* (Washington, 1911), pp. 92–94, quoted by Johnson, Alvin W., *The Legal Status of Church–State Relationships in the United States*, pp. 90–92.
79. V, 3, (4).
80. Commager, *op. cit.*, I, 124, 125.
81. Patton, *op. cit.*, p. 39.
82. V, 3, (4).
83. Patton, *op. cit.*, p. 41.
84. *Ibid.*, pp. 43, 44.
85. Rives, W. C., *History of the Life and Times of James Madison*, I, 562.
86. Quoted by Gewehr, *op. cit.*, p. 200.
87. For their services, see IV, 8. (3), (10), (11).
88. *Cf.* Rowland, *op. cit.*, I, 243: "The disestablishment of the Church of Virginia was the work of its own members, who in laying the foundations of their country's liberty believed they should unselfishly sacrifice the privileges the law had hitherto secured to them, that civil and religious liberty might be found inseparably united."
89. Brant, Irving, *James Madison*, I, 245.
90. IV, 8, (3).
91. XXVI, 7.
92. James, *op. cit.*, p. 68.
93. V, 3, (3).
94. Patton, *op. cit.*, pp. 33, 34.
95. *Journal of the House of Delegates of Virginia, Anno Domini, 1776*, p. 85; *cf.* Eckenrode, *op. cit.*, pp. 49, 50.
96. Patton, *op. cit.*, p. 35.
97. *Ibid.*, p. 36.
98. *Ibid.*
99. Henry, W. W., *op. cit.*, I, 495. *Writings of Thomas Jefferson* (Memorial Association), I, 58, quoted by Eckenrode, *op. cit.*, pp. 50, 51.
100. Eckenrode, *op. cit.*, p. 53.
101. Rowland, *op. cit.*, I, 243.
102. Patton, *op. cit.*, p. 40.
103. *Writings of Thomas Jefferson* (Monticello ed.), II, 222–224.
104. Eckenrode, *op. cit.*, p. 78, quoting *Journal of the House of Delegates* (1784), p. 36 *ff.*
105. Madison, *Works*, II, 59, quoted by Eckenrode, *op. cit.*, pp. 80, 81.
106. Eckenrode, *op. cit.*, p. 100, quoting *Journal of the House of Delegates* (1784), p. 65, and Hening, *op. cit.*, XI, 532.
107. Madison, *Works*, II, 113, quoted by Eckenrode, *op. cit.*, p. 101.
108. V, 3, (5).
109. Eckenrode, *op. cit.*, pp. 108, 109.
110. *Ibid.*, p. 58.
111. *Ibid.*, p. 72.
112. IV, 8, (11).
113. *Journal of the House of Delegates*, Oct., 1784, p. 11, quoted by Eckenrode, *op. cit.*, pp. 83, 84.

114. *Journal,* quoted by Eckenrode, *op. cit.,* p. 84.
115. Eckenrode, *op. cit.,* p. 85.
116. Brant, *op. cit.,* II, 344.
117. Rowland, *op. cit.,* II, 72–73.
118. See James, C F., *op. cit.,* p. 140.
119. Letter (Nov. 26, 1784) quoted by Luzzatti, *op. cit.,* p. 678.
120. Madison, *Works,* II, 99, quoted by Eckenrode, *op. cit.,* p. 102.
121. Madison, *Works,* II, 90.
122. Madison, *Works,* II, 13, and Rives, I, 630, quoted by Eckenrode, *op. cit.,* pp. 90, 91.
123. Rowland, *op. cit.,* II, p. 89.
124. IV, 8, (11).
125. See quotations and discussions in Brant, *op. cit.,* II, 351.
126. Eckenrode, *op cit.,* p 107.
127. *Cf.* Lebeson, Anita Libman, *Jewish Pioneers in America,* p 243, quoting Amer. Jewish Hist. Soc. *Publications,* XI, pp 62, 63.
128. Eckenrode, *op. cit.,* p. 108.
129. IV, 8, (11).
130. Art. "Thomas Jefferson," Appleton, *op. cit.,* III, 423.
131. Wuntch, David, *Epoch-Making Liberty Documents,* pp 103, 104. This is also found in Commager, *op. cit.,* I, 125, 126.
132. *Writings of Jefferson* (Ford ed.), I, 62.
133. Patton, *op. cit.,* p. 48.
134. *Kemper* v. *Hawkins,* cited in Cobb, *op. cit.,* p. 511
135. Eckenrode, *op. cit.,* pp 144, 145, quoting *Journal of the House of Delegates,* Dec. 1797, p. 73.
136. *Ibid.,* p 145.
137. Gewehr, *op. cit.,* p. 215, and Howison, Robert R., *History of Virginia, passim.*
138. Eckenrode, *op cit.,* p. 148.
139. Howison, *op. cit.,* II, 396–405, quoted by Cobb, *op cit.,* p. 512; *cf.* Zollmann, *op. cit.,* p. 109.
140. III, 3, (6); IV, 8, (3), (10), (11), (13).
141. *Letters and other Writings of James Madison,* III, 307–308.
142. Thorpe, *op. cit.,* V, 2744.
143. *Ibid.,* V, 2752, 3.
144. *Ibid.,* V., 2783.
145. *Ibid.,* V, 2783.
146. *Ibid.,* V, 2785.
147. Weeks, Stephen Beauregard, *Church and State in North Carolina* (Baltimore, 1893), p. 213. This is in the Eleventh Series of *Johns Hopkins University Studies in Historical and Political Science.*
148. *Ibid.,* p. 247.
149. *Ibid.,* note 5, quoting *Laws* of 1778, chap. 7, *Iredell's Revisal,* 354.
150. *Ibid.,* p. 242.
151. *Cf* Tiffany, *op. cit.,* p. 246.
152. Weeks, *op. cit.,* p. 257.
153. *Ibid.*
154. Quoted by Thorpe, *op. cit.,* V, 2788.
155. *Ibid.,* V, 2793.
156 *Ibid.,* V, 2799.
157. *Ibid.,* V, 2800.
158. *Ibid.*
159. *Ibid.,* V, 2801.
160. *Ibid.,* V, 2802.
161. *Ibid.*
162 *Ibid.,* V, 2815.
163. Huhner, Leon, *The Struggle for Religious Liberty in North Carolina, with special reference to the Jews,* p. 68.
164 Thorpe, *op. cit.,* V, 2817.
165 *Ibid.,* VI, 3422
166. Sparks, Jared, *The Life of Gouverneur Morris* (Boston, 1832), I, 124; *cf.* "Rise of Religious Liberty in the United States," *Cath. World,* XXIII (1876), 734, quoted by Dignan, Patrick J., *History of the Legal Incorporation of Catholic Church Property in the United States,* p. 26.
167. Thorpe, *op. cit.,* V, 2636, 2637.
168. Kohler, Max, "The Fathers of the Republic and Constitutional Establishment of Religious Liberty," in Luzzatti, *op. cit.,* p. 668.
169. Thorpe, *op. cit.,* V, 2637.
170 *Ibid.,* V, 2636.
171. *Ibid.*
172. Guilday, *op. cit.,* p. 770; *cf.* Dignan, *op. cit.,* p. 28.
173 Thorpe, *op cit.,* V, 2648, 2653.
174. Information from letters Aug. 7, 1943, from the Director of the Legislative

Reference Service, Library of Congress; Aug. 19, 1943, from Frances D. Lyon, Law Librarian of the New York State Library; and Supervisor of Public Records of the New York State Library.

175. Quotation from Frothingham, Ebenezer, *A Key to unlock the Door.*
176. Purcell, Richard J., *Connecticut in Transition, 1775–1818*, p. 191.
177. *Ibid.*, p. 310.
178. *Cf. ibid.*, p. 326.
179. *Ibid.*, p. 331.
180. III, 3, (7).
181. Nevins, *op. cit.*, p. 425.
182. Dana, James, *Two Discourses*, p. 12, quoted by Purcell, *op. cit.*, p. 40.
183. *Acts and Laws of the State of Connecticut* (ed. 1784), pp. 403, 404; quoted by Greene, M. Louise, *op. cit.*, p. 372.
184. Greene, *op. cit.*, p. 376.
185. Nevins, *op. cit.*, p. 426.
186. Lauer, Paul E., "Church and State in New England," p. 99, published in *Johns Hopkins University Studies, Church and State*, X, 181.
187. Quoted by Kistler, Charles E., *This Nation under God*, p. 61.
188. Coons, Paul Wakeman, *The Achievement of Religious Liberty in Connecticut*, p. 24.
189. *Cf.* Purcell, *op. cit.*, pp. 237, 238.
190. *Ibid.*, p. 92.
191. *President Dwight's Decisions of Questions Discussed by the Senior Class in Yale College in 1813 and 1814.* From stenog. notes of Theodore Dwight, Jr. (New York, 1833), p. 87.
192. Purcell, *op. cit.*, p. 91.
193. Quoted by *ibid.*, p. 351.
194. Quoted in *Mercury*, Aug. 27, 1816, from *ibid.*, p. 342.
195. *Ibid.*, p. 352.
196. Beecher, Lyman, *Autobiography*, I, 368.
197. Purcell, *op. cit.*, p. 355.
198. *Ibid.*, p. 344.
199. Coons, *op. cit.*, p. 30.
200. Purcell, *op. cit.*, p. 368.
201. *Ibid.*, p. 378.
202. *Ibid.*, pp. 380, 381.
203. *Ibid.*, p. 384.
204. *Ibid.*, pp. 384, 385.
205. *Ibid.*, p. 385.
206. *Ibid.*, p. 401 (art. 7). Thorpe, *op. cit.*, No. I, 544, 545, contains additional sentences in places where the present editor has marked ellipses, as well as some other minor variations.
207. Purcell, *op. cit.*, p. 402.
208. *Ibid.*, p. 407.
209. Beecher, *op. cit.*, I, p. 405.
210. *Ibid.*, II, 13.
211. Quoted by Purcell, *op. cit.*, p. 419.
212. For this analysis I am largely indebted to Meyer, Jacob C., *Church and State in Massachusetts, 1740–1833*, pp. 2, 3.
213. III, 3, (3).
214. Art. "Boston," *Cath. Enc.*, II, 704. For a more recent study see Lord, *Archdiocese of Boston*, I.
215. Newman, A. H., *History of the Baptist Churches in the United States*, p. 63.
216. *Ibid.*
217. *Cf.* Meyer, J. C., *op. cit.*, p. 8.
218. Newman, *op. cit.*, p. 188.
219. *Ibid.*, p. 191.
220. *Cf.* Walker, W., *History of the Congregational Churches in the United States*, p. 262.
221. Baldwin, *op. cit.*, p. 78, note 43.
222. *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*, IV, 1040, 1041.
223. *Ibid.*
224. Thorning, Joseph Francis, S. J., *Religious Liberty in Transition*, p. 26.
225. Smith, J. E. A., *History of Pittsfield, Massachusetts, 1734–1800*, pp. 366–368, quoted by Baldwin, *op. cit.*, p. 144.
226. Meyer, J. C., *op. cit.*, pp. 234–235.
227. VII, 8, (2).
228. Mott, Rodney L., and Hindman, W. L., eds., *Constitutions of the States and the United States* (1938), pp. 767, 768, 784.
229. XXII, 2.
230. Thorning, *op. cit.*, p. 64.
231. *Ibid.*, p. 66.
232. *Ibid.*, p. 77.
233. Morris, B. F., *op. cit.*, p. 229.
234. Meyer, J. C., *op. cit.*, p. 197, based on *Journal of the Convention*, pp. 613, 614.
235. *Ibid.*, p. 198.
236. *Ibid.*, pp. 219, 220.

237. Printed in *Proceedings of Convention of 1820*, p. 667. *Cf.* Poore, B. P., *Federal and State Constitutions*, I, p. 975, quoted by Thorning, *op. cit.*, pp. 90, 91.
238. See earlier in this section.
239. Smith, Sherman M., *Relation of the State to Religious Education in Massachusetts*, p. 79.
240. For a history of state religious freedom clauses see *Coyle v. Oklahoma* (1911), 221 U.S. 559, 566, 567.
241. V, 1.
242. Morison and Commager, *op. cit.*, p. 107.
243. *Ibid.*
244. Massachusetts had adopted a preliminary and provisional form of government in 1774.
245. Connecticut and Rhode Island remained under their royal charters until the dates named, merely making such changes by act of legislature as seemed necessary.
246. Morison and Commager, *op. cit.*, pp. 110, 111.
247. Thorpe, *op. cit.*, IV, 2448.
248. *Ibid.*, IV, 2454.
249. *Ibid.*, IV, p. 2468.
250. *Ibid.*, Vol IV, pp. 2461, 2462.
251. Shirley, John M., *The Dartmouth College Causes and the Supreme Court of the United States*, pp. 77, 78.
252 *New Hampshire Patriot and State Gazette*, Nov. 21, 1850.
253. Quoted from *The Whig Charge of Intolerance against the New Hampshire Democracy and Gen. Franklin Pierce* (Boston, 1852), p 8.
254. *Ibid.*; *cf.* pp. 8–11.
255. Quoted from Matheny, F. Stacy, *American Devotion* (3d ed.), pp. 134, 135.
256. See Thorpe, *op. cit.*, IV, 2492, 2494; *Constitutions of the States and the United States* (1938), p. 1034.
257. *New Hampshire Manual* (1937), pp. 9, 10.
258. *Ibid.*, p. 10.
259. *Ibid.* p. 8.
260. Thorpe, *op. cit.*, VI, 3251; *cf.* pp. 3250, 3252.
261. *Ibid.*, VI, 3253, art. XXI.
262. *Ibid.*, VI, 3255–3257.
263. Nevins, *op. cit.*, p. 439.
264. Sprague, W. B., *Annals of the American Pulpit*, III, 244.
265. Thorpe, *op. cit.*, VI, 3264.
266. V, 3.
267. Thorpe, *op. cit.*, V, 2597, 2598.
268. *Ibid.*, V, 2595, sec. IV.
269. *Ibid.*, V, 2590, art. I, 4.
270. *Ibid.*, V, 2599.
271. *Ibid.*, I, 558.
272. *Ibid.*, I, 560, 561.
273. *Ibid.*, I, 566.
274. *Ibid.*, I, 567, 568, quoting art. 29.
275. *Ibid.*, I, 568; *cf.* 582, 601.
276. *Ibid.*, V, 3082.
277. *Ibid.*, V, 3085.
278. See Smyth, Albert H., *Life and Writings of Benjamin Franklin*, IX, 266, quoted by Luzzatti, *op. cit.*, p. 684.
279. Thorpe, *op. cit.*, V, 3096.
280. *Ibid.*, V, 3100.
281. *Ibid.*, V, 3113, 3121.
282. Cobb, *op. cit.*, p. 516.
283. V, 4.
284. XIII, 3.
285. Thorpe, *op. cit.*, II, 773.
286. *Ibid.*, II, 784.
287. *Ibid.*, II, 779.
288 *Ibid.*, II, 789.
289 *Ibid.*, II, 800, 801.
290. V, 5.
291. Thorpe, *op. cit.*, VI, 3740.
292. *Ibid.*, VI, 3752.
293. *Ibid.*, VI, 3748.
294. *Ibid.*, VI, 3743.
295. *Ibid.*, VI, 3767.
296. V, 6, 7.
297. Thorpe, *op. cit.*, VI, 3212, 3213.
298. Thorpe, *op. cit.*, VI, 3222, 3223.
299. III, 3, (3), (4).
300. Cobb, *op. cit.*, p. 507.
301. See Morison and Commager, *op. cit.*, p. 115.
302. Thorpe, *op. cit.*, III, 1274, 1276; *cf. America*, July 30, 1938.
303. See Sonne, N., *Liberal Kentucky*, Columbia Studies in American Culture, No. 3.
304. Morris, B. F., *op. cit.*, p. 439.
305. IX, 2.
306 XXII, 4.

NOTES

Chapter VI

1. V, 3, (5).
2. See especially VIII, 1, 2, and VI, 10.
3. *Journal of the Continental Congress*, I, 26.
4. *Ibid.*, I, 26, footnote.
5. *Ibid.*, *cf.* references in Humphreys, E. H., *Nationalism and Religion in America.*
6. Dr. Samuel Cooper (1725–83) was pastor of the Brattle Street Congregational Church in Boston. John Adams was a worshiper at this church.
7. Adams, Charles Francis, *Familiar Letters of John Adams and his Wife, Abigail Adams, during the Revolution*, pp. 37–38.
8. *Journal of the Continental Congress*, I, 27
9. *Ibid.*, I, 27, footnote.
10. *Ibid.*
11. Adams, *op. cit.*, p. 320.
12. Art. "Duché, Jacob," *Appleton, op. cit.*, II, 241.
13. Love, *op. cit.*, pp. 339, 340.
14. Adams, *op. cit.*, p. 66.
15. Love, *op. cit.*, pp. 400, 401.
16. *Ibid.*, p. 409.
17. *Ibid.*, p. 402.
18. IV, 8, (2)
19. *Papers*, Continental Congress, 24 *ff.*, 471, and *Journal*, XXIII, 647, quoted from Collins, V. L., *President Witherspoon*, II, 80–81.
20. Love, *op. cit.*, p. 344.
21. VII, 2.
22. Farrand, Max, *Records of the Federal Convention of 1787*, I, 450–452; *cf. Madison Papers*, pp. 984–986.
23. Mugridge, Donald H., Memorandum. See bibliography.
24. O'Neil, I. M., *Religion and Education Under the Constitution* (1949), p. 106.
25. *Annals of Congress* (Washington, Gales and Seaton, 1884), 1st Cong., I, 18.
26. *Ibid.*, I, 19.
27. *Ibid.*, II, 2237. For these and other interesting facts *re* governmental chaplains, see Report No. 124 of the Judiciary Committee on chaplains in Congress and in the Army and Navy, Mar. 27, 1854, 33d Cong., 1st sess.
28. Griswold, Rufus W., *The Republican Court or American Society in the Days of Washington* (rev. ed., New York, 1856), pp. 433–434, quoted by Koch, *op. cit.*, p. 84, footnote.
29. *President Dwight's Decisions of Questions* . . . , pp. 113, 114.
30. XX, 6.
31. *Lippincott's Monthly Magazine*, Mar., 1887.
32. *Daily National Intelligencer*, Mar. 13, 1860.
33. VII, 7.
34. Bancroft, George, *History of the United States*, VII, 159.
35. *Journal of the Continental Congress*, *op. cit.*, I, 108–109.
36. *Ibid.*, I, 112.
37. *Cf.* Guilday, *op. cit.*, I, 106.
38. See Stillé, Charles J., *Life and Times of John Dickinson*, pp. 140–141.
39. *Journal of the Continental Congress*, I, *op. cit.*, I, 87, 88.
40. Guilday, *op. cit.*, I, 98.
41. *Writings of Washington* (Sparks ed.), III, 91.
42. Guilday, *op. cit.*, I, 97, 98. My friend Father Edmund J. Walsh first called my attention to the great significance of this document. The punctuation, etc., in Force's *American Archives*, 4th ser., V, 412, differs somewhat.
43. Kistler, *op. cit.*, pp. 73, 74.
44. See III, 1, (16).

45. Quoted by Edman and Schneider, *op. cit.*, p. 492.
46. IV, 8, (8).
47. Woodward, W. E., *op. cit.*, p. 197.
48. Quoted by Kistler, *op. cit.*, p. 69.
49. See III, 1, (6).
50. Address of Rt. Rev. Msgr. Fulton J. Sheen, *The Army Chaplain*, July–August, 1938, pp. 29, 30. Jefferson expressed obligations to "Aristotle, Cicero, Locke, Sidney, etc.," for the underlying thought of the Declaration
51. *Cf.* Guilday, *op. cit.*, I, pp. 86, 87.
52. Rowland, Kate Mason, *The Life of Charles Carroll, of Carrollton, 1737–1832, with his Correspondence and Public Papers*, II, 357–358.
53. This information is based mainly on the pamphlet by William Perry Stevens, a well-known Church historian, on *The Faith of the Signers of the Declaration of Independence* (1926).
54. Some authorities credit the Quakers with an additional member listed above under Presbyterian.
55. Paullin, C. O., *Atlas of the Historical Geography of the United States*, p. 49, quoted by Moehlman, C. H., *School and State*, p. 10
56. Billington, Ray, "American Catholicism and the Church-State Issue," *Christendom*, V, 3 (1940), quoted by J. M. ONeill, *op. cit.*, p. 33
57. *Curry* v. *Dist. of Columbia*, from *Reports of Cases adjudged in the Court of Appeals of the District of Columbia* (January 1–May 3, 1809), p. 440
58. *Ibid.*, pp. 438, 439
59. Arts. "German Mercenaries," and "Hessians," *D. A.H.*, II, 384, 385, III, 28.
60. *Journals of Congress (1774–1788)* (Philadelphia, 1800–1), II, 292.
61. VII, 5.
62. *Journals of Congress* (Ford ed.), V, 517.
63. Hunt, Gaillard, *History of the Seal of the United States* (1909), p. 8. A West Indian Frenchman, Eugène Du Simitière, was selected to make the design.
64. *Ibid.*, p. 9.
65. *Ibid.*
66. *Ibid.*, p. 12.
67. See art. *"E pluribus unum," D.A.H.*, II, 180, and Putnam, *Complete Book of Quotations . . .*, p. 520b, note.
68 Hunt, *op. cit.*, p. 42; *cf.* State Department's account in *World Almanac* (1943), p. 332.
69. Rowland, Kate M., *Life of George Mason*, I, 265.
70. *World Almanac* (1941), pp. 342–373; *cf. Nat Geog. Mag.*, July, 1946, "Seals of Our Nation, States, and Territories."
71. Shankle, George E., *State Names, Flags, Seals, Songs, Birds, Flowers, and Other Symbols*, chap. III, *passim*.
72. Preble, George Henry, *Origin and History of the American Flag* (new ed., Philadelphia, 1917), p. 259.
73. Zollmann, *op. cit.*, p. 32, note 54, quoting Stewart, Charles W., in *Nat. Geog. Mag.*, 1817 [error for 1917], p. 303.
74 For these details, see Report No. 124 of Committee on Judiciary on Chaplains, 33d Cong., 1st sess.
75 *Journal of the American Congress, 1774–1788* (Washington, 1823), II, 261–262.
76 *Ibid.*, II, 262
77. Humphrey, E. F., *op. cit.*, quoting from *Journal of Congress*, XIX, 221.
78. For full account, see Dearden, Robert R., Jr., and Watson, Douglas S., *The Bible of the Revolution*, pp. 16–22.
79. IV, 8, (2).
80. *Annals of Congress*, 15th Cong., 1st sess., pp. 833–837.
81. Wuntch, *op. cit.*, p. 86.
82. VI, 2.
83 Wuntch, *op. cit.*, p. 86.
84. *Ibid.*, pp. 90, 91.
85 VI, 10.
86. Belknap Papers, Mass. Hist. Soc. *Collections*, 5th ser., II, 61–62, quoted by Koch, *op. cit.*, p. 25.
87. For conclusive evidence, see Brant, *James Madison*, I, appendix, 453–458.
88. Malloy, William M., *Treaties, Conventions*, etc., p. 1235, quoted by Zollmann, *op. cit.*, p. 12, note 44.
89. Malloy, II, 1480, quoted by *ibid.*, p.

13, note 44. This provision was repeated in Article 9 of the treaty of 1799, ratified in 1800 (Malloy, II, 1490).
90. Zollmann, *op. cit.*, p. 14, note 44.
91. *Ibid.*, p. 15. This author's Sec. 10, devoted entirely to "Treaty provisions affecting religious liberty in the various possessions of the United States," has supplied me with most of my data on this subject.
92. Articles 2 and 3, *U. S. Statutes at Large*, XV, 539, quoted by *ibid.*, p. 12.
93. Of these the most important is the Treaty of Paris, at the close of the War with Spain, but as this is much later and is of special importance it is dealt with in detail in a separate section (XVI, 9).
94. See *Callsen* v. *Hope* (D. C., 1896), 75 F. 758, cited by Zollmann, *op. cit.*, p. 500.
95 XVII, 6.
96. XII, 2.
97. Humphrey, E. F., *op. cit.*, pp. 430, 431, quoting *Diplomatic Correspondence of the American Revolution*, IV, 158–159. See also a translation in Baisnée, Jules A., *France and the Establishment of the American Catholic Hierarchy*, pp. 49, 50.
98. Baisnée, *op. cit.*, pp. 50, 51.
99. *Ibid.*, p. 51.
100. IV, 8, (9).
101. Baisnée, *op. cit.*, p. 33.
102. *Ibid.*, p. 79.
103. Humphrey, E. F., *op. cit.*, p. 432, quoting *Secret Journal of the Acts and Proceedings of Congress*, III, 493.
104. Johnson, W. F., *America's Foreign Relations*, I, 135–136, quoted by *ibid.*
105. "The Continental Congress at Mass," *Amer. Cath. Hist. Researches*, VI, 50–59 (Apr., 1889).
106. Wuntch, *op. cit.*, pp. 110, 111; *cf.* Humphrey, E. F., *op. cit.*, p. 438.
107. Quoted in Amer. Hist. Assn. *Report* (1896), I, 56.
108. Nicolay, John G., and Hay, John, eds., *Complete Works of Abraham Lincoln*, I, 549.
109. Monroe, P., *Cyclopedia of Education*, IV, 372, 373; *cf.* Gabel, *op. cit.*, pp. 174, 175.
110. See Keesecker, Ward W., *Federal Subsidies*, pp. 1–19.
111. Thorpe, *op. cit.*, V, 2912.
112. VI, 1–10.
113. Humphrey, Edward Frank, *Nationalism and Religion in America*, 1774–1789, p. 407.
114. *Cf. ibid.*, chap. 14, "Continental Congress and Religion," espec p. 408.

NOTES

Chapter VII

1. *Journal of the First Session of the Senate of the United States of America* (Washington: Printed by Gales & Seaton, 1820); Senate *Journal*, under Apr. 27, 1789.
2. *Ibid.*, House, April 27.
3. *Ibid.*, House, April 29.
4. *Ibid.*, Senate, April 30.
5. Broadside, Apr. 29, 1789, in Emmet Collection (No. 9596) in N. Y. Pub. Library.
6. *Daily Advertiser*, May 1, 1789.
7. Love, W. DeLoss, Jr., *The Fast and Thanksgiving Days of New England*, p. 459; for a history of the day see XX, 9, (2).
8. *Ibid.*, p. 100.
9. *Ibid.*, p. 136.
10. *Plymouth Colony Records*, XI, 18, quoted by *ibid.*, p. 87.
11. VI, 1; XX, 9, (2).
12. *Annals of Congress*, Sept 25, 1789.
13. Warren, Charles, *Odd Byways in American History*, p. 222.

14. *Writings of Washington* (Sparks ed.), XII, 119–120.
15. *Yale University Library Gazette*, XIII (Jan., 1939), No. 3.
16. *Works of John Adams*, IX, 169–170.
17. *Ibid.*, IX, 172.
18. Warren, *op. cit.*, p., 225.
19. *Writings of Thomas Jefferson* (Monticello ed.), X, 305.
20. IV, 8, (10).
21. *Writings of Thomas Jefferson*, XI, 428–430.
22. Love, *op. cit.*, p. 392; for proclamation, see X, 6.
23. *Letters and other Writings of James Madison* (Philadelphia, 1865), III, 274–275.
24. VII, 2
25. *Revised Statutes*, sec. 5329.
26. See letter from the Legislative Reference Bureau, Library of Congress, Dec. 12, 1938, for this and many other facts quoted in this section.
27. *North Carolina Revised Statutes*, chap. XXXIV, sec. 1.
28. Letter from Legislative Reference Service, Nov. 30, 1938.
29. Columbia Hist. Soc. *Records*, II (1899), 44, referring to "D" on the plan.
30. *Washington City and Capital* (American Guide Series, Washington, 1937), p. 103 Most of this statement may also be found (p. 172) in the article on "Major L'Enfant and the Federal City" (pp. 137–198), in Ambassador Jusserand's *With Americans of Past and Present Days* (New York, 1916).
31. *Major Pierre Charles L'Enfant Memorial Association, 1754–1825*, pp. 6, 7.
32. Columbia Hist. Soc. *Records*, II (1899), 44.
33. *Washington City and Capital* (1937), p. 103.
34. These movements are discussed in other sections: VII, 7; XXII, 3.
35. *Writings of Washington* (Ford ed.), X, 264–265.
36. "Washington's Farewell Address," Gaston, C. R., ed., in *Standard English Classics*.
37. *The Writings of George Washington* (Fitzpatrick, ed.), 27, pp. 249–250.
38. For the Baptists' communication, see XI, 10.
39. *Writings of Washington* (Sparks ed.), XII, 155.
40. Humphrey, *op. cit.*, p. 510, quoting from *Writings of Washington* (Sparks ed.), XII, 168–169.
41. Morris, B. F., *op. cit.*, p. 696.
42. Bangs, Nathan, *History of Methodism*, I, 284, quoted in Buckley, J. M., *History of Methodists in the United States*, pp. 266, 267.
43. XIII, 2.
44. *Writings of Washington* (Sparks ed.) IX, 262.
45. *The Writings of George Washington* (Fitzpatrick, ed.), 32, pp. 314–315.
46. Billington, *op. cit.*, p. 19; *cf.* XII, 1. Original in *Writings of Washington* (Sparks ed.), III, 200–201.
47. For discussion, see VIII, 5.
48. Cornelison, *op. cit.*, p. 163.
49. Malloy, William M., *Treaties, Conventions, etc.*, II, 1791.
50. Philipson, David, *The Jew in America*, (Jewish Tracts, No. 2), p. 21.
51. *Washington City and Capital* (1937), p. 195.
52. *Ibid.*, p. 211
53. *Ibid.*, p. 196.
54 Cutler, William P. and Julia, *Life, Journals and Correspondence of Rev. Manasseh Cutler, LL.D.* (Cincinnati, 1888), II, 58, 59.
55. *Ibid.*, II, 67.
56. For Leland, see IV, 8, (13).
57. Cutler, *op. cit.*, II, 119.
58. *Ibid.*, II, 183.
59. Smith, Mrs. Samuel Harrison, *The First Forty Years of Washington Society* (New York, 1906), pp. 13–15.
60. I am indebted for this and other helpful information to the Honorable William Tyler Page, for many years clerk of the House of Representatives.
61. "Letters of Abijah Bigelow, Member of Congress, to his Wife, 1810–1815," in *Proceedings of the American Antiquarian Society*, New Series, Vol. 40, part 2, Oct., 1930, pp. 305–406.
62 *Ibid.*, p. 349.
63. II Peter 2 1, 2, 3, 15, 18, 19.

64. Adams, Charles Francis, ed., *Memoirs of John Quincy Adams*, V, 458.
65. Hazelton, George C., Jr., *The National Capitol—Its Architecture, Art, and History*, p. 250.
66. Guilday, Peter, *Life and Times of John England*, I, 52.
67. See *The Substance of a Discourse Preached in the Hall of the House of Representatives, January 8, 1826* (Baltimore, 1826)
68. Guilday, *op. cit.*, I, 58–59.
69. Art. "John Hughes," *Cath. Enc.*, VII, 517; *cf.*, XII, 4.
70. Tracy, E. C., *Memoirs of the Life of Jeremiah Evarts, Esq.*, p. 324.
71. Milburn, *op cit.*, (New York, 1859), p. 123.
72. Johnson, Lorenzo D., *Chaplains of the General Government*, p. 48, footnote; *cf.* p. 52.
73 XX, 7.
74. Johnson, Lorenzo D., *op. cit.*, p. 53.
75. *Daily National Intelligencer*, Feb 14, and Dec. 15, 1857.
76. *Ibid.*, Jan. 10, 1857.
77. *Ibid.*, Feb. 21, 1860.
78. *Ibid*, Mar. 13, 1860
79. Letter from Reference Dept., Library of Congress, through Mr. Robert C. Gooch, July 6, 1945 I am greatly indebted to Mr. Gooch for several of the references in this section.
80. *Lippincott's Monthly Magazine*, Mar., 1887.
81. *D.A.B.*, art. "William H. Milburn." He was the well-known blind Methodist minister who was again named chaplain of the Senate in 1893.
82. Hazelton, *op. cit.*, p. 250.
83. *Liberty*, Second Quarter, 1942, p. 29.
84. Information mainly secured from Humphrey, *op cit.*, pp. 453–455.
85. He sometimes called himself a Presbyterian, but see Brown, Wm. G., *Life of Oliver Ellsworth*, p 328.
86. VII, 2, 5; IV, 8, (3), (11).
87. See Stimson, Frederic J., *The Law of the Federal and State Constitutions of the United States*, Book III, chap. 1, art. 4.
88. VII, 2, 5.
89. IV, 8, (11).
90. IV, 8, (10).
91. See IV, 8, (1).
92. Lodge, Henry Cabot, ed., *Complete Works of Alexander Hamilton*, I, 348.
93. Kohler, Max J., "The Fathers of the Republic and Constitutional Establishment of Religious Liberty," Luzzatti, *op. cit.*, p. 700.
94. Hamilton, John C., ed., *Works of Alexander Hamilton*, p. 542.
95. *Ibid.*, pp. 543, 544.
96. *Ibid.*, II, 25–26.
97. *Ibid.*, II, 131.
98. *Ibid.*, II, 133.
99. *Ibid.*, II, 134
100. *Ibid.*, II, 135–136.
101. *Ibid*, II, 137–138.
102. IV, 2.
103. Hamilton, *op. cit.*, II, 351.
104. *A History of Columbia University, 1754–1904*, p. 68.
105. Beveridge, Albert J., *Life of John Marshall*, IV, 69, 70.
106. *Ibid.*, I, 222.
107 Madison to Jefferson, Jan. 7, 1785, quoted by *ibid.*
108. *Cf.* Kohler in Luzzatti, *op. cit.*, p. 699.
109. See *Johnson and Graham's Lessee* v. *William McIntosh* (1823), 8 Wheaton (U. S.) 543, 544–605.
110. *Works of John Adams*, II, 363–404, and *passim*.
111. *Ibid.*, IX, 402.
112. XX, 7, (2).
113. Quoted by Kistler, *op. cit.*, pp. 105–106.
114. *Ibid.*, p. 106.
115. Autograph letter sold at the Hearst Sale in New York, Nov. 16, 1938, described in catalogue, Part I. No. 4.
116. X, 1, and XVI, 5.
117. VII, 5.
118. In *Notes on Virginia*, quoted further, IX, 6.
119. *Writings of Thomas Jefferson* (Monticello ed.), XV, 203–204.
120. Beard, *op. cit.*, I, 439.
121. I, 2, (5).

NOTES

Chapter VIII

1. *The Constitution of the United States*, etc., p. 22.
2. *Dillon* v. *Gloss* (1921), 256 U.S. 368, 377.
3. Beard, Charles A. and Mary R., *The Rise of American Civilization* (1935 ed.), I, 313.
4. III, 1.
5. V, 1.
6. III, 1, (15).
7. VIII, 4.
8. III, 1, (16).
9. IV, 8.
10. III, 1, (1), (4).
11. III, 4, (3).
12. VIII, 2.
13. Art. I, sec. 8.
14. See Mooney, Edward, "The American Tradition," *Cath. Action*, XX, No. 6, June, 1938 The italics are not in the Constitution.
15. VIII, 3, (3).
16. VIII, 5.
17. Art. I, sec. 7.
18. IX, 1.
19. XXIV, 3, (1).
20. *President Dwight's Decisions of Questions discussed by the Senior Class in Yale College in 1813 and 1814*, p. 111.
21. Elliot, Jonathan, *op. cit* (2d ed.), I, 277.
22. IV, 8, (12).
23. Art. VI.
24. See Sister M. Augustina, *American Opinion of Roman Catholicism in the Eighteenth Century*, pp. 376 *ff.*
25. Matheny, *op. cit.*, p. 79.
26. Farrand, *op. cit.*, p. 297.
27. VIII, 2.
28. VIII, 5.
29. Art. "Oath," *Enc. Brit.* XIX, 943.
30. Art. VI, third paragraph.
31. Art. II, sec. 1, last paragraph.
32. *M'Culloch* v *Maryland* (1819), 4 Wheaton (U.S.) 316, 416.
33. Matt. 5 34; *cf.* James 5 12.
34. XX, 7.
35. VII, 8, (11).
36. Humphrey, *op. cit.*, p. 455 See also VII, 8, (1).
37. Zollmann, *op. cit.*, p. 4.
38. IV, 8, (12).
39. Farrand, *op. cit.*, III, 122.
40. Elliot, Jonathan, *op. cit.*, V, 131.
41. Farrand, *op. cit.*, III, 595.
42. *Ibid.*, IV, 28
43. *Ibid*, II, 342, *cf.* 335, 340 (footnote); *cf.* Elliot, *op. cit.*, V, 446
44. *Ibid.*, II, 468; *cf.* Elliot, Jonathan, *op. cit.*, V, 498
45. IV, 8, (11).
46. Farrand, *op cit.*, II, 616, *cf.* III, 362. According to the previous reference, Roger Sherman's recollection was that "It was thought sufficient that this power should be exercised by the States in their separate capacity."
47. *Ibid.*, III, 78, 79.
48. For his life see IV, 8, (4).
49. Humphrey, *op. cit.*, pp. 331–333, quoting Hovey, Alvah, *A Memoir of the Life and Times of the Reverend Isaac Backus*, pp. 204–210.
50. Elliot, *op. cit.*, V, 538.
51. Both quotations from Morris, B. F., *op. cit.*, pp. 255, 256.
52. *Ibid.*, p. 450.
53. *Deliverances of the General Assembly of the Presbyterian Church in the U.S. A. 1910–1940*, p. 27.
54. Ford, Paul Leicester, ed., *The Federalist*, p. 57.
55. V, 3.
56. Farrand, *op. cit.*, III, 227; also Elliot, Jonathan, *op. cit.* (2d ed.), I, 385–386.

57. Quoted by Morton, R. Kemp, *God in the Constitution*, p. 71.
58. Farrand, *op. cit.*, III, 310.
59. *Writings of James Madison* (Hunt ed.). V, 176.
60. Kohler, Max J., in Luzzatti, *op. cit.*, 699, quoting *ibid.*, V, 271.
61. *Connecticut Courant*, Dec. 17, 1787, as quoted in Ford, Paul Leicester, ed., *Essays on the Constitution of the United States* (Brooklyn, N. Y., 1892), pp. 168–171.
62. Straus, Oscar, *op. cit.*, p. 59, gives the reference and a one-line summary. Morris, B. F., *op. cit.*, p. 444, gives a brief extract.
63. *The Massachusetts Centinel*, Dec. 5, 1789.
64 VII, 5.
65. Farrand. *op. cit.*, II, 582.
66. *Ibid.*, II, 587–588, citing Madison's *Journal*.
67. *Cf.* Warren, Charles, *Congress, the Constitution and the Supreme Court*, pp. 37, 83.
68. I am indebted for this historical survey to *International Conciliation*, Jan., 1942, pp. 27, 28.
69. Three of the original thirteen states —Massachusetts, Connecticut, and Georgia—which did not ratify the Bill of Rights in 1789–91, took favorable final action upon it in the winter of 1939, when the 150th anniversary of its adoption was being celebrated!
70. This and other quotations from the Constitution are taken from the copy published in pamphlet form by the U.S. Constitution Sesquicentennial Commission in 1936. The punctuation in the Senate *Journal* published in 1820 is slightly different, p. 96.
71. XVIII, 1, (3); XIX, 5, (2).
72. See Art. I, sec. 9.
73. V, 3, 7, (2); IX, 1.
74. Story, Joseph, *Commentaries* . . . , pp. 690 *ff.*, quoted by O'Neill, *op. cit.*, p. 193.
75. Quoted by Kohler, in Luzzatti, *op. cit.*, p. 692, from *Documentary History of the Constitution*, IV, 412.
76. Gales & Seaton, *The Debates and Proceedings in the Congress of the United States* . . . , commonly referred to as *Annals of Congress*, I, Washington, 1934, pp. 451, 452.
77. *Ibid.*, p. 468.
78. *Ibid.*, pp. 690, 691.
79. *Ibid.*, p. 699.
80. *Ibid.*, p. 734.
81. These references have seldom been quoted. Kohler, in his appendix to Luzzatti, *op. cit.*, p. 694 *ff.*, entitled "The Fathers of the Republic and Constitutional Establishment of Religious Liberty," and Mugridge, *op. cit.* (see bibliography), in his mimeographed memorandum, give accounts based on the originals, but each omits important data.
82. Not Charles Carroll of Carrollton, but a brother of Bishop Carroll; see IV, 8, (9).
83. *Annals of Congress*, I, 757–759.
84. IV, 8, (7).
85 *Annals of Congress*, I, 775.
86. *Ibid*, I, p. 778.
87. *Ibid.*, I, 780.
88. *Ibid.*, I, 783, 784.
89. *Ibid.*, I, 86 (Senate).
90. *Ibid.*, I, 795.
91. *Ibid.*, I, 736.
92. *Ibid.*, I, 796.
93. *Ibid*, I, 808.
94. *Ibid.*, I, 808, 809.
95. *Ibid.*, I, 809
96. *Journal of the First Session of the Senate* . . . (Gales & Seaton, 1820), p. 70.
97. *Ibid.*, p. 77.
98. *Annals of Congress*, I, 85, 86; *cf. Journal* . . . *of the Senate*, p. 83.
99. *Journal* . . . *of the Senate*, p. 84.
100. *Ibid.*
101. IV, 8, (11) and VIII, 1, (2).
102. *Journal of the Senate*, p. 86.
103. *Ibid.*, p. 87.
104. *Ibid.*, p. 88.
105. Brant, James, *James Madison, The Nationalist*, [Vol. II of life], pp. 353, 355.
106. Mr. Brant, under date of Dec. 2, 1948, wrote the author that in his subsequent

volumes he would refer merely to his "belief" that Madison wrote the clause, recognizing that authorship has not been proved.

107. *Cf.* Hunt, Gaillard, ed., *The Writings of James Madison*, v. 389.
108. VI, 7.
109. Holcombe, A. N., *State Government in the United States*, pp. 17, 18.
110. Beard, Charles A., *An Economic Interpretation of the Constitution* (new ed., 1935), p. 292.
111. *Enc. Soc. Sci.*, V, 265.
112. VIII, 5.
113. *Enc. Soc. Sci.*, V, 265, 266.
114. *Writings of James Madison* (Hunt ed.), VI, 101–103, quoting the *National Gazette*, Mar. 29, 1792. *Cf.* also *The American Museum or Universal Magazine*, June, 1792.
115. *Constitutions of the States and the United States* (1938), p. 1816.
116. XIX, 4.
117. VIII, 5.
118. V, 3–9; appendix 4.
119. *Kentucky Resolutions*, sec. 6, quoted by Whipple, Leon, *Story of Civil Liberty in the United States*, p. 30.
120. VIII, 1. For discussion from a Catholic standpoint, see Sullivan, Walter B., *The Religious Clauses in the Constitution of the United States*, unpublished Master's dissertation, Catholic University, 1935 (not consulted).
121. Mochlman, C. H., *School and Church*, p. ix.
122. V, 1.
123. From "Déclaration des Droits de l'homme et du citoyen," adopted in 1789 and inserted as preamble to constitution of September 14, 1791, printed in Legg, L. G. Wickham, *Select Documents Illustrative of the History of the French Revolution*, II, 217.
124. From first section of constitution of Sept. 14, 1791, headed "Dispositions fondamentales garanties par la constitution," printed in *ibid.*, II, 219.
125. See V, 3, (5); *cf.* also treatment of friars' lands in the Philippines, XVI, 10.
126. *N. Y. Herald-Tribune*, Dec. 14, 1939.
127. VI, 3.
128. VIII, 5; *cf. ibid.*, pp. 50 (note 17), 142–144.
129. *Fletcher* v. *Peck* (1810), 6 Cranch (U.S.) 87, 138
130. VIII, 5, (1).
131. VIII, 5, (2), (3).
132 *Constitution of the Philippine Republic*, art. III, sec. 1.
133. Humphrey, *op. cit.*, p. 360, quoting Story, Joseph, *Commentaries on the Constitution of the United States* (abridged ed., 1833), pp. 701, 702.
134. *World Missionary Conference* (1910), VII, 124, quoted from Snow, *op. cit.*, p. 264.
135. XIX, 3; XXII, 4.
136. XX, 3.
137. XX, 6; XXI, 4, (3).
138. XVIII; XIX.
139. XX, 9.
140. *Cf.* remarks of Dr. Philip Schaff, in Schaff, *op. cit.*, p. 23.
141. *Everson* v. *Board of Education* (1946), 330 U.S. 1, p. 12, note 28. *Cf.* XIX, 5, (2).
142. XVI, 3.
143. *Davis* v. *Beason* (1890), 133 U.S. 333, 342, 33 L. Ed. 637.
144. *Letters from an American Farmer* (1782; ed. of 1904), p. 57.
145. For the way in which the Fourteenth Amendment has been misinterpreted, *cf.*, *e.g.*, Collins, Charles Wallace, *The Fourteenth Amendment and the States*, quoted by Laski, Harold J., *Authority in the Modern State*, p. 62.
146. For the remains of its influence in Oxford, *cf.* Dicey, Albert Venn, *Law and Public Opinion*, pp. 479–483, quoted by *ibid.*, p. 63.
147. *Ibid.*, pp. 62, 63.
148. *In re King*, 46 Fed. 905, 912 (1891).
149. I owe this summary to Whipple, Leon, *Our Ancient Liberties*, a book to which I am much indebted.
150. See note 143 above.
151. VIII, 5.
152. *Permoli* v. *Municipality* (1845), 3 Howard (U.S.) 589, 591, 11 L. Ed. 588.

153. *Ibid.*, pp. 609, 610.
154. VIII, 5.
155. Cargill, Oscar, *Intellectual America* (1941), p. vii.
156. XX, 7; XXIV, 3, (2).
157. *N. Y. Times*, Dec. 10, 1941.
158. *Ibid.*, Dec. 29, 1941.
159. *Ibid.*, Feb. 16, 1941.
160. Beveridge, *Life of John Marshall*, III, 115, note 1.
161. These and other quotations are from Farrand, *op. cit.*, III, 115, note 1
162. *The Federalist*, Lodge, 485–486, quoted by Beveridge, *op. cit.*, III, 120; *cf.* also Corwin, Professor Edwin S., "Judicial Review," *Enc. Soc. Sci.*, VIII, 459.
163. Gabriel, Ralph Henry, *The Course of American Democratic Thought*, p. 407.
164. U. S. Jud. Act of 1789, 1 Stat. 85, sec. 25.
165. *United States Code—New Title 28 Judiciary and Judicial Procedure*, 1948, pp. 1564, 65; *cf. Code* of 1925, sec. 344(a) (b), and 347(b).
166. *Ibid.*, p. 1565.
167. *Ibid.*, pp. 1565, 1566.
168. *Ibid.*, p. 1570.
169. *Ibid.*, p. 1578.
170. VIII, 5.
171. VIII, 5, (2) and (3); XVIII, 1, (3); XXIII, 3, (1), etc.
172. Morison and Commager, *op. cit.*, p. 199.
173. Art. "Judicial Review," *Enc. Soc. Sci.*, VIII, 459.
174. *Ibid.*, VIII, 459.
175. Beveridge, *op. cit.*, III, 105.
176. *Massachusetts Senate Journal, 1798–99*, XIX, 238, MS. volume, Mass. State Library, quoted by *ibid.*, III, 106.
177. 1 Cranch 137, 177 (U.S. 1801).
178. *Ibid.*
179. *Cf.* Beveridge, *op. cit.*, III, 116.
180. *Stuart* v. *Laird* (1803), 1 Cranch (U.S.) 299, 309, 2 L. Ed. 115.
181. Beveridge, *op. cit.*, I, 323.
182. *Ibid.*, III, 142.
183. Art. "Marshall, John," *Enc. Brit.* (11th ed.), XVII, 771.
184. VIII, 5.
185. *Cf. Liberty Oil Co.* v. *Condon National Bank*, 260 U.S. 235, 243 (1923). Louisiana, because of its early history, adopted a modification of the Code Napoléon, which was based mainly on the civil law.
186. Moehlman, C. H., *School and Church*, p. 59.
187. Hockett, Homer C., *The Constitutional History of the United States*, I, 44, note 19.
188. Art. "Huguenots," *Enc. Brit.* (11th ed.), XIII, 867.
189. Lippmann, Walter, *The Good Society*, p. 374.
190. Pound, Roscoe, *The Spirit of the Common Law*, p 97, quoted by *ibid.*, p. 257.
191. *Cf.* Poore, Benjamin P., comp., *Federal and State Constitutions*, p 1338, quoted by Luzzatti, *op. cit.*, p. 686.
192. Thorpe, *op. cit.*, VII, 4359.
193. V, 6, (4), 8, (1), and 7, (3).
194. See Zollmann, *op. cit.*, p. 8.
195. *Barron* v. *Baltimore* (1833), 7 Peters (U.S.) 243, L. Ed. 672.
196. *Ibid.*, at 249.
197. *Permoli* v. *First Municipality No. 1 of New Orleans*, 3 How. 589, 609 (U.S. 1895), quoted by Zollmann, *op cit.*, p. 8.
198. Brown, *op. cit.*, p. 106.
199. Schaaf, *op. cit.*, p. 8.
200. Bryce, *op. cit.*, II, 554.
201. U.S. Constitution, *op. cit.*
202. *Cong. Globe*, 39th Cong., 1st sess., 2542–2543 (May 10, 1866); extract in Johnson, *Readings in American Constitutional History, 1776–1876*, 520, quoted by Hockett, *op. cit.*, II, 336.
203. Warren, *op. cit.*, p. 432.
204. *Cf.* Gabriel, *op. cit.*, p. 222.
205 *Ho Ah Kow* v. *Numan*, 12 Fed. Cas. No. 6,546, p. 252, 256 (1879).
206. *Barbier* v. *Connolly* (1884), 113 U.S. 27, 31, 28 L Ed. 923, quoted by Gabriel, *op. cit.*, p. 224.
207. Warren, *op. cit.*, p. 437.
208. See Hockett, *op. cit.*, I, 120.
209. *Watson* v. *Jones* (1871), 80 U.S. 679, 728, (13 Wallace), 20 L. Ed 666.
210. *Spies* v. *Illinois* (1887), 123 U.S. 166, 31 L. Ed 80.

211. *In re* King, 46, F. 905, 912 (C.C.W.D. Tenn. 1891).
212. *Allgeyer* v. *Louisiana*, 165 U.S 578 (1897).
213. *Meyer* v. *Nebraska* (1923), 262 U.S. 390, 399, 67 L. Ed. 1042.
214. Zollmann, *op. cit.*, p. 11.
215. *Gitlow* v. *New York* (1924), 268 U S. 652, 666, L. Ed. 1138.
216. *Cf.* Whipple, *op. cit.*, pp. 143, 144.
217. 268 U.S. 672.
218. *Hamilton* v. *University of California*, 293 U.S. 245 (October Term, 1934).
219. *Ibid.*
220. 11 *American Jurisprudence*, p. 1100 (1937).
221. *Permoli* v. *New Orleans*, 44 U S. (3 How.) 589, 609, 11 L. Ed. 739.
222. *Meyer* v. *Nebraska* (1923), 262 U.S. 390, 67 L. Ed. 1042, 29 A L. R. 1446.
223. Warren, *op. cit.*, p. 458.
224. *Ibid.*, pp. 458–459.
225. *Palko* v. *Connecticut*, 302 U.S. 319 (1937). The significance of this case to the cause of religious freedom was brought to my attention by Mr. Justice Stone.
226. First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."
227. 302 U.S 319, 324 (1937).
228. ". . . it is possible that some of the personal rights safeguarded by the first eight Amendments against National action may also be safeguarded against state action, because a denial of them would be a denial of due process of law. Chicago, Burlington & Quincy Railroad v. Chicago, 166 U. S. 226. If this is so, it is not because those rights are enumerated in the first eight Amendments, but because they are of such a nature that they are included in the conception of due process of law."
229. 302 U.S 319, 326 (1937).
230. 302 U S. 444, decided March 28, 1938.
231. 303 U.S 448, 449.
232. 302 U.S. 636.
233. 303 U.S 451.
234. *Ibid.*, p 450.
235 Other difficulties of the state with the witnesses will be discussed in XVIII, 8; XX, 10, (2), (a); XXIII, 15.
236. This (p. 1) and other quotations in this section are from *Cantwell et al.* v. *The State of Connecticut*, 310 U.S. 296 (1940).
237. Sec. 6294 of the Gen Statutes of Conn.
238. *Schneider* v *New Jersey*, 308 U.S. 147, 160 (1939).
239. *Cantwell et al* v. *The State of Connecticut*, 310 U S. 296, 303 (1946).
240. *Ibid.*, p 310.
241. *N. Y. Sun*, Apr. 7, 1941.
242. *Cox* v. *New Hampshire*, 312 U.S. 569 (1941), and *Prince* v. *Massachusetts*, 321 U.S 158 (1944).
243. *Murdock* v *Pennsylvania*, 319 U.S 105 (1943) *Cf March* v. *Alabama*, 326 U.S. (1946). For later cases involving religious freedom for Witnesses, see VIII, 8, XX, 10, (2), (a).
244. XVI, 11
245. *Christian Century*, Sept. 4, 1940
246. Hendrick, Burton J., *Bulwark of the Republic*, p 428.
247. Thompson, Joseph P., *Church and State in the United States*, pp. 16, 26.
248. *Cf.* Chafee, *op. cit.*, p. 404. In preparing this section I have been much aided by Chapter 10, "The Effect of the Fourteenth Amendment," and the references there given, in O'Neill, *op cit.*, pp. 153–188. *Cf.* Corwin, Edward S, *The Constitution and What It Means To-day* (9th ed., 1947), *passim*, espec. pp. 155–156.
249 *Everson* v *Board of Education*, 330 U.S. 1.
250. XIX, 2, (1).
251. *Ibid.*
252. XVIII, 3.

253. Berge, Wendell, "Justice for the Citizen," in *Commonweal*, Nov. 27, 1942, pp. 140, 141. This art. by the assistant attorney general has been taken as authoritative.
254. *Ibid.*, p. 141.
255. The omission of this freedom in the art. was, according to the author, inadverent.
256. Berge, *op. cit.*, p. 141.
257. Release, Dept. of Justice, June 4, 1942.
258. 132 F. 902 (1943). The decision was based primarily on the Fourteenth Amendment, the decision of the Supreme Court in the case of *Meyer* v. *Nebraska* [VIII, 5, (2)], and Section 52, Title 18, U.S. Code quoted above.
259. Memorandum quoted in text.
260. XVIII, 8, (1).
261. *Information Service*, Jan. 24, 1942, quoting Exec. Order No. 8802.
262. *F E P C: How It Operates* (Washington, 1944).
263. Letter dated July 20, 1943, from H. I. Barron, Chief, Compliance Division, with extracts from an unpublished report.
264. *Final Report, Fair Employment Practice Committee* (Washington, 1947), p. 39.
265. VIII, 1.
266. XIX, 2 (d).
267. V, 2 and 3.
268. *Century Dictionary.*
269. IV, 8, (10).
270. VI, 3.
271. VIII, 2.
272. VIII, 5.

NOTES

Chapter IX

1. Quoted by Morison and Commager, *op. cit.*, p. 107.
2. *Cf.* Thorning, J. F., *Religious Liberty in Transition*, pp. 6, 7, and *passim.*
3. For an excellent survey of American developments in this period, see Greene, Evarts B., "Persistent Problems of Church and State," presidential address before American Historical Society, *Amer. Hist. Rev.*, Jan., 1931.
4. V.
5. *Cf.* Cobb, *op. cit.*, p. 510.
6. Dates and figures from *The Constitution of the United States of America with Amendments. . . . Published by the U. S. Constitution Sesquicentennial Commission. . . .* [1937].
7. Elliot, Jonathan, *Debates*, etc. (See bibliography).
8. *Ibid.*, IV, 191–200, etc.
9. *Ibid.*, II, 118, 148, etc.
10. *Ibid.*, III, 93, 659, etc.
11. VIII, 1, (2).
12. IV, 8, (4).
13. *Ibid.*
14. Debates, *Resolutions and other Proceedings of the Convention of the Commonwealth of Massachusetts*, pp. 149–151.
15. *Ibid.*, pp. 151–152.
16. *Ibid.*, p. 119.
17. Letter to Samuel Cooper, May 15, 1781, quoted from *Works of Benjamin Franklin* (Sparks ed.), IX, 35, 36.
18. *Records of the General Association*, p. 126, quoted by Humphrey, *op. cit.*, p. 462.
19. Humphrey, *op cit.*, p. 478.
20. Schaff, *op. cit.*, p. 31, quoting Hoffman, Murray, *Ecclesiastical Law of the State of New York*, p. 40.
21. *Journal of Congress (1774–1788)*, XIII, 172. For Livermore, see IV, 8, (7).
22. Morton, *op. cit.*, p. 72.
23. IV, 8, (13).
24. See Morton, *op. cit.*, p. 72.
25. IV, 8, (6).

26. Morton, *op. cit.*, p. 89.
27. Elliot's *Debates*, III, 659, quoted by Schaff, *op. cit.*, p. 30.
28. IV, 8, (7); VIII, 2, (1)
29. *Journal of Congress* (*1774–1788*), XIII, 178.
30. V, 4.
31. Weeks, *op. cit.*, p. 58.
32. *Ibid.*, p. 261.
33. *Ibid.*, p. 262, quoting from Elliot's *Debates* (2d ed.), IV, 191–215.
34. Weeks, *op. cit.*, p. 262.
35. *Ibid.*, p. 263.
36. *Ibid.*
37. Carey, *American Museum*, II, No. V., pp. 536–553, quoted by Schaff, *op. cit.*, p. 31.
38. XIX, 1, 2, XXIII, 5.
39. *The Federalist* (Ford ed.), p. 633.
40. *Ibid.*, p. 634.
41. *Ibid.*, pp 636, 637.
42. *Ibid.*, p. 640.
43. *Ibid.*, p. 646.
44. *Ibid.*, p. 648
45. VIII, 2, (1).
46. *President Dwight's Decisions of Questions* . . . , p. 113.
47. *The Beard's Basic History of the United States*, p. 137.
48. Supreme Court, in *Davis* v. *Beason* (1889), 133 U.S. 333, 342, 33 L. Ed 637.
49. The principal exceptions were that Massachusetts and Connecticut continued their official bond with Congregationalism. See V, 6, 7.
50. *Cf.* comments on this striking fact in Schaaf, V. T., *op. cit.*, p. 10.
51 V, 8.
52. V, 8, (10), (13); and *Coyle* v. *Smith* (1910), 221 U.S. 559, 566, 567, 55 L. Ed. 853. This Oklahoma case is valuable for its summary of the conditions under which different states were admitted to the Union.
53. VI, 10.
54. Thorpe, *op. cit.*, V, p. 2899.
55. *Ibid.*, V, 2910; *cf.* Mott, Rodney L., and Hindman, W. L., eds., *Constitutions of the States and the United States* (1938), p. 1192.
56. Moehlman, C. H., *School and Church*, p. 37.
57. X, 4.
58. Quoted in *Coyle* v. *Smith*, 221 U.S., 568, 569.
59. Thorpe, *op. cit.*, II, 651.
60 *Studies in American Church History*, XXX; art. by Rev. Michael J. Curley, "Church and State in the Spanish Floridas (1783–1822)."
61. *Cath. Enc.*, art. "Florida," espec. VI, 118.
62. Thorpe, *op. cit.*, II, 661.
63. *Ibid.*, II, 664.
64. *Ibid.*, II, 733.
65. *Blan* v. *Odin* (1848), 3 Tex. 288, 300, cited by Zollmann, *op. cit.*, p. 16.
66. Thorpe, *op. cit.*, I, 381.
67. *Ibid*, III, 1360.
68. *Ibid*, I, 391.
69. *Ibid.*, I, 403.
70. *Ibid*, I, 475.
71. XIX, 4, (3).
72. Thorpe, *op. cit.*, V, 2963.
73. Zollmann, *op. cit.*, p. 9.
74. Thorpe, *op. cit.*, IV, 1989.
75. *Ibid*, VII, 4015.
76. XIV, 9.
77. XIV, 10.
78. Thorpe, *op. cit.*, V, 2998.
79. *Ibid.*, VII, 4271.
80. *Ibid.*, V, 2694.
81. Art. I, sec. 11.
82. X, 3.
83. Thorpe, *op. cit.*, VII, index under "Divine Being, Belief in a."
84. *Ibid.*, I, 333, Preamble.
85. *Ibid.*, I, 537, Preamble.
86. *Ibid.*, I, 600, 601. These clauses—from the Preamble and Article I respectively—were taken over from the constitution of 1792.
87. *Ibid.*, II, 918.
88. *Ibid.*, VI, 3255, 3256.
89. See XX, 7; XXIV, *passim*.
90. *Religious Liberty in the United States Today* (1939), pub. by American Civil Liberties Union, p. 8.
91. XX, 7.
92. *Religious Liberty*, etc., *op. cit.*, p. 9.
93. XVI, 3.
94 *Religious Liberty*, etc., p. 9.

95. *Ibid.*, p. 48.
96. *Journals of Congress*, xi, p. 718; cited by Humphrey, Edward Frank, *Nationalism and Religion in America 1774–1789*, p. 408.
97. Thorpe, *op. cit.*, V, 2793.
98. *Ibid.*, V, 2637.
99. *Ibid.*, VI, 3253.
100. *Ibid.*, I, 579.
101. *Ibid.*, III, 1722.
102. IV, 8, (2).
103. Thorpe, *op. cit.*, V, 1384 (italics ours).
104. *Cf.* Guilday, *op. cit.*, p. 406.
105. *Writings of Madison* (Hunt ed.), V, 288.
106. See sketch, IV, 8, (2).
107. *Works of John Witherspoon, D.D.* (Edinburgh, 1804–5), IX, 220–223. Date of letter not indicated. Probably written in connection with adoption of the state constitution of 1777.
108. Purcell, *op. cit.*, p. 405, footnote.
109. *Bunk* v. *Stratton* (1903), 176 N.Y. 150, 158
110. From letter of Dec. 31, 1937, from Library of Congress Legislative Reference Service. *Cf.* also Bland and Ingram, *op cit.*, p 85.
111. Art. "Detroit, Diocese of," *Cath. Enc.*, IV, 759.
112. Confrey, *op. cit.*, p. 90; Compiled Statutes of 1847, par. 1618.
113. XVI, 7.
114. XIV, 8.
115. V, 2.
116. Thwing, Charles F., *History of Higher Education in America*, p. 175.
117. *Ibid.*, chap. VI, *passim*.
118. *Ibid.*, p. 176.
119. Eaton, Clement, *Freedom of Thought in the Old South*, p. 288.
120. Thwing, C. F., *op. cit.*, p. 178.
121. Malone, Dumas, *The Public Life of Thomas Cooper*, p. 264.
122. *Ibid.*, p. 260.
123. *Ibid.*, chap. XI, espec. p. 350 *ff.*; Eaton, Clement, *op. cit.*, p. 286; *cf.* XIV, 2.
124. Eaton, *ibid.*
125. Malone, *op. cit.*, p. 267.
126. XVIII, 9.
127. IV, 8, (10).
128. V, 2.
129. Cheney, *History of the University of Pennsylvania*, p. 124.
130. *Ibid.*, p. 131.
131. *Ibid.*
132. *Ibid.*, p. 166.
133. IV, 8, (12).
134. *Will of General George Washington* (Alexandria, 1800), pp. 7–9.
135. XXII, 3
136. XX, 6, (3).
137. Kirchwey, George W., "Education for the Law," in Monroe, P., *Cyclopedia of Education*, III, 659, 660.
138. *Ibid.*, III, 660.
139. VI, 10.
140. Thwing, *op. cit.*, pp. 188, 189.
141. *Ibid.*, pp 190, 191.
142. Stokes, A. P., *Memorials of Eminent Yale Men*, II, pp. 196, 197.
143. IV, 8, (9).
144. Cubberley, Ellwood P., *The History of Education*, 1920, p. 705.
145. *Ibid.*
146. Curti, *op. cit.* p 50.
147 Weigle, *American Idealism*, p. 315.
148. Morris, B. F., *op. cit.*, p. 440.
149. IV, 8, (9), XII, 2.
150. *Writings of Washington* (Sparks ed.) XII, 162–163.
151. *Cf.* his letters, VII, 5; IV, 6, (3); etc.
152. *Writings of James Madison*, III, 305.
153. Monaghan, Frank, and Lowenthal, Marvin, *This Was New York. The Nation's Capital in 1789* (1943), p. 182.
154. Sonne, Niels, *Liberal Kentucky (1780–1828)*, p. 260.
155. *A History of Columbia University, 1754–1904*, p. 60.
156 *N.Y. Times*, Mar. 5, 1944.
157. See Thwing, *op. cit.*, p. 113.
158. *Federal Council Bulletin*, Dec., 1946; quoting art. in *Journal of the Presbyterian Historical Society*.
159. *Writings of Washington* (Sparks ed.), XII, 245.
160. Weigle, *op. cit.*, pp. 149–153, *Cf.* X, 1.
161. *Ibid.*, p. 239.
162. *Writings of Thomas Jefferson*, XV, 404.
163. For these influences, see X.

164. Winterbotham, William, *An Historical . . . View of the U.S.A.*, III, 309.
165. Curti, *op. cit.*, p. 263.
166. *Writings of Thomas Jefferson* (Monticello ed.) II, 224, 209, 310.
167. Blakely, *American State Papers on Freedom in Religion*, pp. 174, 175, quoting *Letters and Other Writings of James Madison* (1865), III, 273 *ff.*
168. *Ibid.*, p. 593, quoting *Writings of James Madison* (Hunt ed.), IX, 126–128.
169. Baird, Robert, *Religion in America* (new ed. 1856), p. 267.
170. For the struggle of some Protestant denominations to break away from European control, see XI, 5, 6.
171. IV, 8, (10), (11).
172. VIII, 1.
173. VIII, 2.
174. V, 1.
175. IX, 1.
176 V, 6–8; IX, 2.
177. Cooper, James Fenimore, *America and the Americans* (2d ed., London, 1836), II, 318.
178. XXVI, 7.
179. *Cf.* V, 6, 7; XIII, 3, etc.
180. VIII, introd.

NOTES

Chapter X

1. Beard, Charles A. and Mary R., *The Rise of American Civilization*, I, 525.
2. See Shepherd, William R., *Historical Atlas*, espec. map No. 199.
3. Mode, Peter G., *op. cit.*, pp. 366, 367; *cf.* Walker, Williston, *History of the Congregational Churches*, p. 312.
4. For a well-documented study of the Revival and its influence, see Cleveland, Catharine C., *The Great Revival in the West 1797–1805*.
5. VI, 10.
6. Gabriel, *op. cit.*, p. 33.
7. Fish, Carl Russell, *Rise of the Common Man* (Vol. VI in "History of American Life"), pp. 30–31.
8. Bacon, Leonard Woolsey, *History of American Christianity* (Amer. Church Hist. Ser.), pp. 230, 231.
9. *Ibid.*, p. 231.
10. Adams, Henry, *History of the United States . . .*, IX, 175.
11. His baccalaureate address in 1797 on *The Nature and Danger of Infidel Philosophy* is often taken as the beginning of this movement.
12. XI, 11.
13. III, 1, (17); XI, 1.
14. Dorchester, Daniel, *Christianity in the U.S.* (revised ed., 1895), p. 373.
15. III, 1, (17); XI, 1.
16. Sweet, William W., *The Baptists* ("Religion on the American Frontier," Vol. I), p. 33.
17. *Ibid.*, p. 67.
18. *Ibid.*, p. 36.
19. Sweet, W. W., *The Presbyterians* ("Religion on the American Frontier," Vol. II), p. 5.
20. IV, 8, (2).
21. Art. "The Scotch-Irish," *D. A. H.*, V, 45
22. Sweet, *The Presbyterians*, p. 4.
23 *Ibid.*, p. 8, *cf.* also action of first General Assembly in 1789, *ibid.*, p. 752.
24. *Ibid.*, p. 9.
25 *Ibid.*, pp. 28, 29.
26. *Ibid.*, p. 32.
27. *Ibid.*, pp. 37–49
28. *Ibid.*, *cf.* map opp. p. 50.
29. For interesting early regulations, see *ibid.*, pp. 142–144.
30. Tewkesbury, Donald G., *The Founding of American Colleges and Universities before the Civil War . . .* (1932), pp. 93, 94, (*cf.* pp. 84–87), quoted from *ibid.*, p. 76, note.

31. Sweet, *The Presbyterians*, pp. 75, 76.
32. Sweet, *The Congregationalists* ("Religion on the American Frontier," Vol. III), p. 77.
33. *Ibid.*, p. 21.
34. Beecher, Lyman, *A Plea for the West* (3d ed., 1936), pp. 22–27, quoted from Sweet, *The Presbyterians*, p. 81.
35. See XV, 3, Lane Debate.
36. XI, 1.
37. Carman, Harry J., *Social and Economic History of the United States*, p. 419.
38. Weigle, *American Idealism*, p. 150.
39. XII.
40. *Cf.* art. in *Cath. Enc.* on Louisville, Cincinnati, and Detroit. For Indian missions see XVI, 4.
41. IX, 3; *cf.* De Smet, X, 9.
42. XII, 4, (4).
43. XI, 13.
44. Sweet, *The Story of Religion in America*, p. 315.
45. *N.Y. Times*, Oct. 19, 1947.
46. X, 5.
47. Mode, *op. cit.*, pp. 623, 624, quoting *The Home Missionary*, Aug., 1862.
48. Other similar national movements developed somewhat later, such as the American Missionary Society, which became particularly identified with the cause of Negro education in the South, in 1846.
49. *Quarterly Journal of the American Education Soc.*, Apr., 1828, pp. 64–65.
50. Turner's *Frontier in American History* appeared in 1920.
51. *Quarterly Journal, op. cit.*, p. 62.
52. Strong, Josiah, *Our Country*, p. iv.
53. XVI, introduction.
54. De Tocqueville, Alexis, *Democracy in America* (trans. Reeve, rev. ed., 1900), I, 311, 312.
55. XII, 4, (4).
56. For a good account of this work, see McMaster, John Bach, *History of the People of the United States*, IV, chap. XXXVIII.
57. XI, 1.
58. X, 9; XVI, 4.
59. VIII, 2, (2).
60. Goodykoontz, *op. cit.*, p. 96.
61. VI, 10.
62. XIV, 8, (2).
63. XVI, 5.
64. *Quarterly Journal of the American Education Society*, No. VIII (Apr., 1829), pp. 224–225.
65. XVI, 5.
66. McMaster, *op. cit.*, II, 392–396.
67. Art. "Alien and Sedition Acts," *D.A.H.*, I, 48, 49.
68. Quoted by Professor Edward P. Cheyney in article on "Present Importance of the First Amendment," *Annals of the American Academy of Political and Social Sciences*, CXCV, p. 82.
69. IV, 8, (11).
70. IV, 8, (10).
71. Art. "Know-Nothingism," *Cath. Enc.*, VIII, 667.
72. Morris, B. F., *op. cit.*, p. 384. Not found in Adams' published *Writings*.
73. *Ibid.*, pp. 385–386.
74. Facts and quotation from Purcell, *op. cit.*, p. 277.
75. V, 6.
76. Sprague, William B., *Annals of the American Pulpit*, II, 165.
77. Beard, *op. cit.*, I, 381.
78. Van Buren, Martin, *Inquiry into the Origin and Course of Parties in the United States*, quoted by Myers, *op. cit.*, p. 101.
79. Niebuhr, *op. cit.*, p. 175, quoting *A Western Pioneer*, I, 43.
80. Quoted by Purcell, *op. cit.*, p. 329.
81. Meyer, *op. cit.*, p. 155.
82. See 14 Mass. 340 *et seq.*
83. V, 7 (3).
84. IV, 8, (10). Cf. Foote, H. W., *Jefferson. . . .*
85. Baudier, Roger, *The Catholic Church in Louisiana*, pp. 251–254.
86. Thorpe, *op. cit.*, III, 1360.
87. *Ibid.*, III, 1369.
88. Art. "New Orleans," *Cath. Enc.*, XI, 10.
89. *Louisiana under the Rule of Spain, France, and the United States, 1785–1807* (trans. and ed. Robertson, James Alexander), II, 266–267.
90. *Ibid.*, II, 283–284.
91. Richardson, *op. cit.*, I, 367–368.
92. X, 1.

93. III, 1, (16) and (17).
94. For interesting account of this significant movement, see *Autobiography and Correspondence of Lyman Beecher*, I, 259, 260.
95. Michael, O. S., *The Sunday School in the Development of the American Church*, p. 64.
96. XV.
97. Watson, F. D., *Charity Organization Movement in the United States*, p. 91.
98. Morison and Commager, *op. cit.*, p. 127, quoting Ramsay, David, *History of the American Revolution* (1789).
99. *Works of Edward Livingston*, I, 508, quoted by Lewis, Orlando Faulkland, *Development of American Prisons and Prison Customs 1776–1845*, p. 14.
100. Peabody, Francis, "Unitarianism and Philanthropy," *Charities Review*, V, 29. For this and other facts regarding early humanitarian movements in the United States, I am largely indebted to Watson, F. D., *op. cit.*, pp. 66–91.
101. Nevins, *op. cit.*, pp. 452–454.
102. McMaster, J. B., *The Acquisition of the Political, Social, and Industrial Rights of Man in America*, p. 54.
103. Prof. W. W. Sweet has called my attention—unfortunately too late for use—to a Chicago doctor's thesis (1930) by Amos A. Hovey, entitled *A History of the Religious Phase of the American Movement for International Peace.*
104. Quoted by Kistler, *op. cit.*, pp. 113–114
105. Quoted by Morison and Commager, *op. cit.*, p. 311.
106. *Cf.* IV, 8, (9).
107. Baltimore Cathedral Archives, printed in the *Researches*, VIII, 18, quoted by Guilday, *op. cit.*, p. 807.
108. Bassett, John Spencer, ed., *Correspondence of Andrew Jackson*, II, 150.
109. *Cf.* Guilday, *op. cit.*, p. 809
110. Thompson, Robert Ellis, *History of the Presbyterian Churches in the United States* (Amer. Church Hist. Ser., Vol. VI), p. 92.
111. *Georgetown Federal Republican*, May 31, 1813, quoted by Wright, Edward Needles, *Conscientious Objectors in the Civil War*, p. 14.
112. Wright, *op. cit.*, p. 15.
113. Jones, Rufus M., *The Later Periods of Quakerism*, II, 722, quoted by ibid., p. 15.
114. Wright, *op. cit.*, p. 24, citing Brumbaugh, Martin G., *History of the German Baptist Brethren in Europe and America*, p. 492.
115. M'Leod, Alexander, *A Scriptural View of the Character, Causes, and Ends of the Present War* (2d ed., New York, 1815), p. v.
116. *Ibid.*, p. 15.
117. *Ibid.*, p. 35.
118. *Ibid.*, pp. 60, 73.
119. *Ibid.*, p. 161.
120. *Ibid.*, p. 58.
121. *Ibid.*, p. 194.
122. *Ibid.*, p. 231.
123 Beecher, Lyman, *Autobiography, Correspondence, Etc.*, I, 266.
124. Curti, Merle, *Peace or War, The American Struggle against War, 1636–1936*, and his art. on "Peace Movements" in the *D.A.H.*
125. Tyler, Alice Felt, *Freedom's Ferment*, p. 411.
126. U.S. Department of Justice figures, quoted from *World Almanac* (1942) p. 505.
127. For a good summary, see art. "Irish Immigration," *D.A.H.*, III, 153–155.
128. *Ibid*, III, 154.
129. XIX, 2.
130. XII, 4, (4).
131. XII, 4, (5).
132. XVI, 13.
133 XIII, 2, 3, 4.
134. Curti, *op. cit.*, p. 297.
135. X, 5.
136. XVI, introd.
137. These references are drawn mainly from arts. in *D.A.H.* on "Inventions," "Industrial Revolution," etc., and on lists in *The Beards' Basic History of the United States*, pp. 194, 201–203.
138. XV, 5; VIII, 5.
139. XII, 4.
140. XVI, introd.
141. XX, 9.
142. Beecher, *op. cit.*, footnote by Leonard Bacon, I, 154.

143. Beard, Charles A. and Mary R., *Rise of American Civilization* (new ed., 1936), I, 734, 735.
144. Bassett, *Correspondence, op. cit.*, IV, 256.
145. *Ibid.*, V, 330.
146. *Ibid.*, V, 333, quoting the original draft, and adding: "In this connection it is proper to call attention to a spurious letter widely circulated by Jackson's enemies at the time of the discussion over the removal of the Indians from Georgia. It bore date of Sept. 29, 1832, and was said to have been directed to the American Board of Missions, with severe strictures on missionaries. It has been shown in its true nature in an article by Dr. Bernard C. Steiner, *Am. Hist. Rev.*, XXIX, 722."
147. XI, 13, XXIII, 4, (8).
148. X, 6.
149. Nevins and Commager, *The Story of a Free People* (1942), p. 188.
150. Eaton, *op. cit.*, p. 82.
151. *Cf.* his *The Theology of Politics*, and Quick, O. C., *Christianity and Justice, passim.*
152. *Putnam's Complete Book of Quotations* (1926), p. 687b.
153. IV, 6.
154. Tyler, *op. cit.*, p. 22, quoting Wecter, Dixon, *Saga of American Society*, p. 100.
155 See Wainwright, J. H., *Inequality of Individual Wealth the Ordinance of Providence, and Essential to Civilization;* and Schlesinger, Arthur M., Jr., *The Age of Jackson*, pp. 17, 352.
156. X, 10.
157. XIV, 2.
158. Schlesinger, *op cit.*, p. 352.
159. *Ibid.*, p. 356.
160. Applegarth, Albert C., *The Quakers in Pennsylvania, 1682–1776*, p. 51, reprinted in *Johns Hopkins University Studies in Historical and Political Science*, 10th ser., on *Church and State*, p. 431.
161. Art. "Native Policy," *Enc. Soc. Sci.*, XI, 263.
162. Art. I, sec. 8.
163 *Enc. Soc. Sci.*, XI, 264.
164. Edwards, Martha L., "A Problem of Church and State in the 1870's," *The Mississippi Valley Hist. Rev.*, XI (June, 1934), p. 39.
165. *American State Papers, Indian Affairs*, I, 54.
166. *Cf. ibid.*, I, 235, 319.
167. *Ibid.*, I, 687.
168. XVI, 4
169. *American State Papers, Indian Affairs*, II, 273 (1822).
170. *Indian Missions of the U.S.*, Dep't of the Interior, Office of Indian Affairs, *Bulletin*, 1928, No. 8, p. 2.
171. *American State Papers, Indian Affairs*, II, 446.
172. *Ibid.*, II, 669.
173. Art. "Samuel Kirkland," Appleton, *C.A.B.*, III, 555. See also Univ. of Chicago typed Ph D. thesis on "Samuel Kirkland and his Mission to the Iroquois."
174. *Writings of Washington* (Ford ed.), XII, 117.
175. Art. "De Smet," *Cath. Enc.*, IV, 752.
176 *Ibid.*, IV, 753.
177. Maynard, Theodore, *The Story of American Catholicism*, p. 408.
178. Jackson, Helen Hunt, *A Century of Dishonor*, pp. 272–273.
179. *Ibid.*, p. 276.
180. *Ibid.*, pp. 270, 271, quoted by Bacon, *op. cit.*, p. 265.
181. Tracy, E. C., *Memoir of the Life of Jeremiah Evarts, Esq.*, p. 339.
182. *Ibid.*, pp. 345–346.
183. *Ibid.*, p. 429.
184. See *ibid.*, pp. 442–448.
185. Gales and Seaton, *Register of Debates in Congress*, VI, 310.
186. *Ibid.*, VI, 318.
187. *Cf. Speeches on the Passage of the Bill for the Removal of the Indians*, etc. (Boston, 1830).
188. Gales and Seaton, *op. cit.*, VI, 381.
189. 5 Peters 1.
190. Art *"Cherokee Nation* v. *Georgia," D.A.H.*, I, 352.
191. Art. *"Worcester* v. *Georgia," ibid.*, V, 484.
192. *Ibid.*

193. Ford, Paul Leicester, ed., *The Federalist*, p. 542, note.
194. See Foreman, Grant, *Indian Removal*, Univ. of Oklahoma, 1932, cited by Gabriel, *op. seq.*, pp. 168–171.
195. Gabriel, Ralph Henry, *Elias Boudinot, Cherokee, and His America*, University of Oklahoma Press, 1941, *passim*, espec. chaps. 19–23.
196. Bacon, *op cit.*, p. 267.
197. XI, 9 (under "Friends"); XVI, 4
198. Tyler, *op cit.*, p. 46, quoting Emerson, *Works*, X, 352.
199. Quoted by Curti, *op. cit.*, p. 368.
200. *Ibid.*, chap. XV.
201. Emerson, R. W., *Essays* (2d ser., 1894 ed.), pp. 204–212.
202. Emerson, *Complete Works* (1892 ed.), I, 236.
203. XVI, 1.
204. XVI, 5.
205. XII, 4.
206. XX, 2, (1).
207. XV, 4, (2).
208. XIV, 8, (2).
209. XIV, 12.
210. Emerson, *Works* (1883 ed.), volume entitled *Miscellanies*, p. 324.
211. For all these factors, see III, 1.
212. VI, 3.
213. XI, 11.
214 XV, 3, 4.
215 X, 1.
216. X, 7.
217. Emerson, *Essays* (2d ser.), 203.
218. Curti, *op. cit.*, p. 392.
219. Rice, M. H., *American Catholic Opinion in the Slavery Controversy*, p. 100.
220. *Ibid.*, p. 96.
221. See Commager, Henry Steele, *Theodore Parker* (Boston, 1936).
222. Art. "Parker, Theodore," Appleton, *op. cit.*
223. Commager, *Theodore Parker*, p. 165.

NOTES

Chapter XI

1. The Churches are considered in the approximate order of their organization or reorganization after the Revolution.
2. The present-day attitude of the various Churches toward the State and legislation will be discussed in a later chapter (XXIII, 4).
3. Gunn, Alexander, *Memoir of Reverend John H Livingston* (2d ed., 1856), pp. 298, 299, quoted by Humphrey, *op. cit.*, p. 292.
4. XXIII, 4.
5. Story, Joseph, *Commentaries on the Constitution* (1879), quoted in Keesecker, W. W., *Laws Relating to the Releasing of Pupils from Public Schools for Religious Instruction*
6. Amendment X, Bill of Rights.
7. Cubberley, E. P., *Public Education in the United States*, p. 52. *Cf.* VIII, 1.
8. XIX, 1; IX, 4.
9. *Cf.* Greene, *op. cit.*, p. 266.
10. XII, XIII.
11. Dates have been taken mainly from the volumes on the different denominations in the American Church History Series.
12. Alaska, then under Russian rule, had an Orthodox Church in 1792.
13. Sweet, *Religion in Colonial America*, p. 308.
14 James, C. F., *Documentary History of the Struggle for Religious Liberty in Virginia*, pp. 75, 76.
15 For these and other facts, see "Historical Sketch," *Doctrines and Discipline of the Methodist Episcopal Church* (1936), an official publication.
16. McElreath, Walter, *Methodist Union*

in the Courts, "Testimony of Bishop Collins Denny," pp. 68–69.

17. Lee, Jesse, *History of the Methodists*, p. 47, quoted by Buckley, J. M., *History of Methodists in the United States*, p. 142.
18. Buckley, *op. cit.*, pp. 235, 236; *Doctrines and Discipline of the Methodist Episcopal Church*, p. 8.
19. Buckley, *op. cit.*, p. 242.
20. *Ibid.*, p. 247.
21. *Doctrines and Discipline of the Methodist Church*, p. 9.
22. Buckley, *op. cit.*, pp. 158–169.
23. *Doctrines and Discipline*, etc., p. 9.
24. Buckley, *op. cit.*, p. 265.
25. *Cf.*, *ibid.*, pp. 321, 322.
26. X, 1.
27. McElreath, *op. cit.*, p. 21.
28. XV, 4 (1) (a).
29. McElreath, *op. cit.*, p. 23.
30. XXIII, 4, (3).
31. Sweet, *Religion in Colonial America*, pp. 249–254.
32. See Balch, Thomas, *Calvinism and American Independence*, Philadelphia, 1909.
33. III, 3, (6).
34. Thompson, Robert E., *History of the Presbyterian Churches in the United States*, p. 57.
35. IV, 8, (2).
36. Humphrey, *op. cit.*, pp. 440, 459.
37. Thompson, R. E., *op. cit.*, p. 63.
38. *Ibid.*, p. 63.
39. Schaff, *op. cit.*, p. 50; *cf.* also his *Creeds of Christendom*, III, 720.
40. *The Constitution of the Presbyterian Church in the U.S.A.* (1894), pp. 80, 81. The original wording has a semicolon after "word," and "if" instead of "in" before "matters."
41. Mochlman, C. H., *School and Church*, p. 61.
42. XI, 13.
43. See III, 4, (4).
44. Weigle, *op. cit.*, p. 75.
45. Mampoteng, Charles, "The New England Anglican Clergy in the American Revolution," *Historical Magazine of the Protestant Episcopal Church*, Dec 1940, p. 270.
46. *Ibid.*, p. 270.
47. *Ibid.*, p. 274.
48. *Ibid.*, pp. 279, 280.
49. *Ibid.*, p. 284.
50. *Ibid.*, p. 288.
51. *Ibid.*, p. 290.
52. Tiffany, C. C., *History of the Protestant Episcopal Church in the U.S.A.*, p. 159.
53. *Ibid.*
54. See Van Tyne, Charles H., *Loyalists in the American Revolution*, *passim*.
55. Perry, W.S., *Historical Collections Relating to the Episcopal Colonial Church . . .* (Hartford, 1870), pp. 281–282; cited by Humphrey, *op. cit.*, p. 435.
56. *Works of Benjamin Franklin* (Sparks ed.), X, 202–204.
57. Tiffany, *op. cit.*, pp. 290, 291.
58. *Ibid.*, p. 296.
59. See Perry, W. S., *A Half-century of Legislation*, III, 38, quoted by *ibid.*, pp. 329, 330.
60. Wright, John, *Early Prayer Books of America*, p. 77.
61. *Ibid.*, p. 81.
62. Quoted by Tiffany, *op. cit.*, p. 569, appendix.
63. Schaff, *op. cit.*, p. 52.
64. *Ibid.*
65. Manross, William Wilson, *A History of the American Episcopal Church* (1935), p. 208.
66. *Ibid.*
67. *A compilation containing the Constitution and Canons of the Protestant Episcopal Church in the Diocese of Washington with the Laws of Maryland . . .* (1915), pp. 7–9.
68. *Ibid.*, p. 47.
69. Act of Congress approved July 18, 1947, *Washington Diocese*, Sept. 1947.
70. See Canon 40, "Of the Dissolution of the Pastoral Relations."
71. *A Compilation*, etc., p. 69.
72. Brewer, Clifton Hartwell, *History of Religious Education in the Episcopal Church to 1835*, p. 328.
73. Eddy, Richard, *History of Universalism* (Amer. Church Hist. Ser., Vol. X), p. 401.
74. *Ibid.*

75. *Life of Murray*, pp. 335 f., quoted by Eddy, *op. cit.*, pp. 402, 403.
76. Eddy, *op. cit.*, p. 403.
77. *Ibid.*, p. 404.
78. *Ibid.*, pp. 413, 414.
79. *Ibid.*, p. 416.
80. *Ibid.*, p. 431.
81. *Ibid.*, p. 432.
82. *Ibid.*, p. 462.
83. *Ibid.*, p. 468.
84. XI, 6.
85. XI, 7.
86. Dubbs, Joseph Henry, *History of The Reformed Church, German* (Amer. Church Hist. Ser.), p. 314.
87. *Cf. ibid.*, p. 316.
88. *Ibid*, p. 323.
89. *Cf.* art. "Reformed Church in the United States," *Enc. Brit.*, XXIII, 24.
90. Dubbs, *op. cit.*, p. 331.
91. Spreng, Samuel P., *History of the Evangelical Association* (Amer. Church Hist. Ser., Vol. XII), p. 400.
92. Zollmann, *op. cit.*, pp. 206–208.
93 *Cf. Yearbook of Amer. Churches* (1941), pp. 28, 29; *Columbia Enc.*, under Churches concerned.
94. The various German Reformed Churches are dealt with under XI, 5.
95. Corwin, E. T., *History of the Reformed Church, Dutch* (Amer. Church Hist. Ser.), p. 176.
96. *Ibid.*, p. 137; *cf.* p. 71.
97 *Ibid.*, p. 153.
98. Mode, *op. cit.*, pp. 143–145, quoting Hastings, Hugh, *Ecclesiastical Records of the State of New York*, VI, 3963–3966.
99. Corwin, *op. cit.*, p. 160.
100. *Ibid.*, p. 162.
101. *Ibid*, p. 163.
102. *Ibid.*, pp. 165, 166.
103. *Ibid.*, p. 174.
104. *Ibid.*, p. 176.
105. *Ibid.*, p. 207.
106. Mode, *op. cit.*, p. 139, quoting Hastings, Hugh, *op. cit.*, V, 3459–3460.
107. XI, 10, 15.
108. Berger, D., *History of the Church of the United Brethren in Christ* (Amer. Church Hist. Ser., Vol. XII), p. 334.
109. See III, 2, (1).
110. III, 4, (5).
111. Clark, Joseph S., *Historical Sketch of the Congregational Churches in Massachusetts*, p. 193.
112. See Walker, Williston, *History of the Congregational Churches in the United States*, pp. 209–212, 217.
113. IX, 5.
114. Walker, W., *op. cit.*, pp. 315, 316.
115. XVI, 5.
116. For the European background of the Quakers in their relation to religious freedom, see Belasco, Philip S., *Authority in Church and State.*
117. Sweet, *Religion in Colonial America*, pp. 146–150.
118. Thomas, A. C., and Richard H., *History of the Society of Friends in America*, (Amer. Church Hist. Ser., Vol. XII), p. 211.
119. *Ibid.*, p. 244.
120. *Ibid.*
121. *Ibid.*, p. 245.
122 *Ibid.*, p. 235.
123. Myers, *op. cit.*, p. 11.
124. Whipple, *op. cit.*, p. 9.
125. *Writings of Washington* (Sparks ed.), XII, 168–169.
126. Thomas, *op. cit.*, p. 284.
127. X, 9.
128. Thomas, A. C., and R. H., *op. cit.*, pp. 288, 289.
129. *Ibid.*, pp. 289, 290.
130 III, 3, (3).
131. For sketches of these men and their contribution to religious freedom, see III, 3; IV, 8.
132. V, 2, and espec. V, 3, (2).
133. *Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*, IV, 1040.
134. Sweet, *Religion in Colonial America*, p. 220, quoting *The Autobiography of Benjamin Franklin* (O. S. Coad, ed., 1929), pp. 154–155.
135. III, 4, (5).
136. Sweet, *Religion in Colonial America*, p. 297.
137. Meyer, *op cit.*, p. 93, quoting Hovey, A., *Life and Times of Isaac Backus*, pp. 204–210.
138. IV, 8, (13).

139. Newman, A. H., *History of the Baptist Churches in the United States*, pp. 372, 373. For Washington's reply, see VII, 5.
140. *Ibid.*, p. 393.
141. *Ibid.*, p. 398.
142. Quoted in art "John Mason Peck," Appleton, *op. cit.*, IV, 696.
143. Mecklin, *op. cit.*, p. 169.
144. Allen, Joseph Henry, and Eddy, Richard, *History of the Unitarians and the Universalists in the United States* (Amer. Church Hist. Ser., Vol. X), p. 195.
145. *Ibid.*, p. 194; for discussion of case, see V, 7, (2).
146. *Autobiography . . . of Lyman Beecher*, II, 110.
147. For their important work and present status, see XIX, 2, (2).
148. Wentz, Abdel Ross, *The Lutheran Church in American History* (2d ed., 1933).
149. See *The Journals of Henry Melchior Muhlenberg*, 2 vols. reviewed by William W. Sweet in *Christian Century*, Feb. 3, 1943, and Dec. 5, 1945.
150. Jacobs, H. E., *History of the Evangelical Lutheran Church in the United States* (Amer. Church Hist Ser., Vol. IV), pp. 337, 338.
151. Wentz, *op. cit.*, pp. 98–99, discusses the results.
152. *Ibid.*, p. 123.
153 *Ibid.*, p. 129
154. *Ibid.*, pp. 128–130.
155. *Ibid.*, pp. 372, 387.
156. *Ibid.*, p. 401.
157. X, 1.
158. Tyler, B. B., *History of the Disciples of Christ* (Amer. Church Hist. Ser., Vol. IV), p. 27.
159. *Ibid.*, pp. 28, 29.
160. *Ibid.*, p. 45.
161. *Ibid.*
162. *Ibid.*, p. 49.
163. *Ibid.*, p. 52.
164. Adams, Henry, *History of the United States*, IX, 185.
165. Niebuhr, H. R., *op. cit.*, p. 166.
166. Garrison, Winfred Ernest, *Religion Follows the Frontier—A History of the Disciples of Christ*, p. 154. See also his *An American Religious Movement, A Brief History of the Disciples of Christ.*
167. *N. Y. Times*, August 1, 1947.
168. See note 166.
169. X, 8.
170. Art. "Pastorius," Appleton, *op. cit.*, IV, 608.
171. Wedel, Cornelius, *Abriss der Geschichte der Mennoniten*, IV, 144.
172. Simms, P. Marion, *The Bible in America*, pp. 120–125.
173. Wright, E. N., *Conscientious Objectors in the Civil War*, p. 18.
174. Wedel, *op. cit.*, IV, 159
175. Letter from Mennonite Historical Library, Scottdale, Pa., September 2, 1941.
176. Letter from the Reverend Theodore O. Wedel, son of the Mennonite historian, January 22, 1942
177. *Yearbook of American Churches* (1941), p. 133.
178. XIX, 2, (4).
179. Hamilton, J. Taylor, *History of the Unitas Fratrum, or Moravian Church, in the U.S.A.* (Amer. Church Hist. Ser., Vol. VIII), p. 443.
180. *Ibid.*, p. 472.
181 Humphrey, *op. cit.*, p. 159.
182. Hamilton, *op. cit.*, p. 489.
183. Buckley, J. M., *op. cit.*, p. 309.
184. *Ibid.*, p. 347.
185. *Negro Year Book* (1937), p. 220.
186. Myrdal, Gunnar, *An American Dilemma*, chap. 40, "The Negro Church," II, 860.
187. *Ibid.*, II, 861.
188. XXIII, 14
189. For references, see "Swedenborgianism," *D. H.*, Vol. V.
190 XIV, 7; XVI, 3.
191. XIV, 12.
192. Grund, Francis J., *The Americans in their Moral, Social and Political Relations*, I, 61.
193. See V, 6, (4).
194. Grund, *op. cit.*, I, 290, 291.
195. Baird, Robert, *Religion in America* (new ed.), p. 232.

196. Zollmann, *op. cit.*, pp. 411–422, espec. p. 422.
197. X, 1.
198. For an interesting discussion of this, see Rowe, Henry Kalloch, *The History of Religion in the United States*, chap. IV, "The Consequences of Freedom."
199. XII, 4, (1).
200. Walker, Williston, *A History of the Congregational Churches in the United States* (4th ed., 1899), pp. 203, 204
201. Grund, *op. cit.*, I, 281.
202. *Ibid.*, I, 292.
203. *Ibid.*, I, 294.

NOTES

Chapter XII

1. The term "Roman Catholic" is generally used in these volumes, as "Roman" alone is offensive to members of the Church which recognizes the Pope as Supreme Pontiff, and "Catholic," as referring exclusively to Roman Catholic, is objected to by many Episcopalians and some other groups who consider their own position truly catholic. Roman Catholic, as the *Oxford Dictionary* shows, has been used as a conciliatory term since early in the seventeenth century It seems fair, as it is taken from a translation of the official designation *Ecclesia Romana Catholica et Apostolica* It is the term regularly used in U. S Government Census reports.
2. Thurston, Herbert, *No Popery*, chapters on "Anti-papal Prejudice," quoted by Williams, Michael, *The Shadow of the Pope*, pp. 20, 21.
3. Billington, *op. cit.*, p 6
4. *Cf. ibid.*, p 9
5. *Studies in American Church History*, XXIV, 319, 320
6. Peirce, Benj., *A History of Harvard University*, p. 201; *cf.* Billington, *op. cit.*, p. 16
7. IV, 2.
8. Williams, M., *op. cit.*, p. 32.
9. *Ibid.*
10. *Ibid.*, p. 33.
11. McSorley, *op. cit.*, p. 729.
12. Williams, M., *op. cit.*, pp. 36, 37.
13. Guilday, Peter, *The Life and Times of John Carroll*, p 791.
14. O'Gorman, Thomas, *History of the Roman Catholic Church in the United States* (1899 ed), p. 247.
15. *Ibid.*, p 248.
16. Guilday, *op. cit.*, p. 154.
17. *Ibid.*, pp. 155, 156.
18 *Cf.* IV, 2, for extensive contemporary quotations.
19 IV, 2
20. VI, 3.
21. For the ecclesiastical situation of the time, see Guilday, *op. cit.*, p. 163.
22 Williams, M., *op. cit.*, p. 42.
23. For details of the laws in the different states, see *ibid.*, chap. III.
24 V, 5.
25. Dignan, *op. cit.*, pp. 28, 30.
26 *Ibid.*, p 45
27. XII, 5.
28. Sampson, William, *The Catholic Question in America*, pp. 73, 74.
29 XII, 5
30. Sampson, *op cit.*, p CXIV, appendix.
31 *Ibid.*, pp. CXVII, CXVIII, appendix.
32. Baisnée, Jules A, *France and the Establishment of the American Catholic Hierarchy*, pp 45, 46, 47.
33. IV, 8, (9).
34 O'Gorman, *op. cit.*, p. 260.
35. Article "Carroll, John," *Cath. Enc.*, III, 382
36. IV, 8, (9).
37. Baisnée, *op. cit.*, p. 117.

158. Desmond, H. J., *The Know-Nothing Party*, p. 130.
159. Billington, *op. cit.*, p. 414.
160. *Ibid.*, p. 431, note 6.
161. *Ibid.*, p. 418.
162. Myers, *op. cit.*, pp. 205, 206, quoting *Congressional Globe*, Jan. 5, 7, 9, 1856.
163. See Billington, *op. cit.*, chap. XVI.
164. Clinchy, *op. cit.*, p. 70.
165. Sampson, William, *The Catholic Question in America*, pp. 8, 9, 10.
166. *Ibid.*, pp. 11, 12.
167. Art. "Kohlmann, Anthony," *Cath. Enc.*, VIII, 686.
168. Sampson, *op. cit.*, pp. 13, 14.
169. *Ibid.*, pp. 25–27.
170. The Council of Trent, Sess. 14.
171. *I.e.*, the Protestant faith.
172. Sampson, *op. cit.*, pp. 31–33.
173. *Ibid.*, pp. 34, 35.
174. *Ibid.*, pp. 40, 41.
175. *Ibid.*, p. 45.
176. *Ibid.*, p. 51.
177. *Ibid.*, pp 81, 82.
178. *Ibid.*, p. 83.
179 *Ibid.*, p. 85
180. *Ibid.*, p. 96.
181. *Ibid.*, p. 103.
182. *Ibid.*, p. 110.
183. *Ibid.*, pp. 110, 111.
184. *Ibid.*, pp. 113, 114.
185. Art. "Kohlmann, Anthony," *Cath. Enc.*, VIII, 686–87.
186. Art. "Seal of Confession," United States of America, *Cath. Enc.*, XIII, 661, 662.
187. *Hills* v. *State* (1901), 61 Neb., quoted by Zollmann, *op. cit.*, p. 430.
188. See IV, 8, (9) for Carroll; VII, 7 for England; and XVI, 14 for later liberal leaders.
189. Quoted from Mochlman, *op. cit.*, pp. 134–135.
190. *Ibid.*, p. 136, citing *The Great Encyclical Letters of Leo X*, III, p. 452.
191. See espec. XVII, 4, (1), where the "Syllabus of Errors" of 1864 and the Vatican Decree of 1870 are discussed; XXIII, 4, (1), giving the Roman Catholic theory of Church–State relations.
192. See the interesting biography by Theodore Maynard, *Orestes Brownson; Yankee, Radical, Catholic.*
193. Quoted from *Christian Century*, Oct. 7, 1942, "Catholics Plan a New Order."
194. Brownson, Orestes, *Essays and Reviews*, p. 370, quoted by Gabriel, *op. cit.*, p. 58.
195. XVI, 14.

NOTES

Chapter XIII

1. XVII, 3.
2. *Documents Relating to the Colonial History of New York*, XIV, 315.
3. *Ibid.*, XIV, 341.
4. *Ibid.*, XIV, 351.
5. Wiernick, P., *History of the Jews in America*, p. 79.
6. *Ibid.*, p. 74.
7. *Ibid.*, p. 78.
8. *Ibid.*, pp. 102, 103, 117.
9. *N. Y. Times*, Sept. 1, 1947.
10. See Baron, Salo W., *The Jewish Community, Its History and Structure to the American Revolution* (3 vols., 1943).
11. Goodman, Abram Vossen, *American Overture: Jewish Rights in Colonial Times*, p. 3.
12. Luzzatti, *op. cit.*, p. 675.
13. Lebeson, A. L., *op. cit.*, p. 202, quoting Amer. Jewish Hist. Soc., *Publications*, II, 66–70; XXVII, 391.
14. *Jewish Enc.*, XII, 365.
15. XIII, 3.
16. Goodman, *American Overture, op. cit.*
17. *Op. cit.*, pp. 4, 5.

18. *Ibid.*, p. 6.
19. *Ibid.*, p. 15.
20. *Ibid.*, p. 21.
21. *Ibid.*, p. 30.
22. *Ibid.*, p. 152.
23. *Ibid.*, p. 166.
24. *Ibid.*, p. 169.
25. *Ibid*, p. 199.
26. *Ibid.*, p. 200.
27. III, 3, (3).
28. Goodman, *op. cit.*, p. 36.
29. *Ibid.*, p. 58.
30. *Ibid.*, pp. 63–65.
31. *Ibid.*, p. 123.
32. *Ibid.*, p. 120.
33. XVII, 9, (4).
34. XVII, 11.
35. XXIII, 4, (4).
36. IV, 6, (3).
37. *Ibid.*
38. *Ibid.*
39. Monaghan, Frank, and Lowenthal, Marvin, *This Was New York. The Nation's Capital in 1789* (1943), p. 184.
40. Wiernick, *op cit*, pp 99, 100.
41. *Ibid.*, pp. 100, 101.
42 *Ibid.*, pp. 102, 103.
43. The Union now includes over three hundred congregations and practically the entire American and American-German elements which are affiliated with Jewish religious institutions. *Ibid.*, p 244.
44. Blakely, William Addison, *American State Papers bearing on Sunday Legislation* (rev and enlarged ed, Washington, 1911), pp. 195–197, citing Noah, Mordecai M, *Travels*, etc. (1819), appendix, p. 25
45. *Writings of James Madison*, III, 97 (May 15, 1818).
46. Blakely, W. A., *op cit.*, pp. 199–200, quoting *ibid.*, III, 178, 179.
47. Noah, Mordecai M., *Discourse delivered at the Consecration of the Synagogue . . . in the City of New York* (1818), pp. 43–45.
48. From holographic copy of letter reproduced in Lebeson, *op. cit.*, opp. p. 286.
49. *Proceedings*, A. J. H. S., XVI, p. 37 ff., art. by Leon Hubner on "The Struggle for Religious Liberty in North Carolina."
50. See XX, 7.
51. Thorpe, *op. cit.*, III, pp. 1689, 1690.
52. *Ibid.*, III, 1690.
53. *Ibid.*
54. *Ibid.*
55. XI, 3.
56. Nevins, *op. cit.*, pp. 430, 431.
57. For a good general summary of his work, see Levinger, Lee J., *A History of the Jews in the United States.*
58. Altfeld, L. Milton, *The Jews Struggle for Religious and Civil Liberty in Maryland*, p. 21.
59 *Ibid.*, pp. 70–75.
60. *Ibid.*, pp 77–78
61. *Ibid.*, pp 79–80
62. *Ibid*, p. 97.
63 *Ibid.*, pp. 24, 25, 26.
64 *Ibid.*, p 27.
65. *Ibid.*, pp. 27–28.
66 *Ibid.*, pp 28–30.
67. *Ibid.*, p. 32
68 *Ibid.*, pp 32–33.
69 *Ibid.*, p. 35
70. *Ibid.*, pp. 110, 111, 112, 125, 126, 127.
71 *Ibid.*, 201–2.
72 VIII, 1, 2
73 V, 3, (5).
74 V, 6, (4).
75. An exception is McMaster, John Bach, *The Acquisition of the Political, Social and Industrial Rights of Man in America*, pp. 87–89.
76 Thorpe, *op. cit*, III, 1715, 1716.
77 *Ibid.*, III, 1715.
78. Quoted by *ibid.*, III, 1716.
79 *Ibid.*
80. *Ibid.*, III, 1745.
81. *Ibid.*, III, 1782 (art. 37).
82 Wiernick, *op. cit.*, p. 121.
83. *Ibid.*, p. 172
84. *Cf.* Janowsky, Oscar I., ed, *The American Jew*, p. 50
85. Wiernick, *op. cit.*, p 176.
86. Janowsky, *op. cit*, p. 46.
87. Myers, *op. cit.*, p. 207.
88 XXIII, 4, (4).
89 *Papers relating to the Foreign Relations of the United States, Transmitted*

to Congress, with the Annual Message of the President, December 8, 1885, pp. 49–50.

90. *Ibid.*, p. 50.
91. *Ibid.*, p. iv.
92. Quoted by Matheny, *op. cit.*, p. 179.
93. I owe this incident to Torpey, *Judicial Doctrines of Religious Rights in America*, 1948, pp. 140–142; citing *S. S. & B. Live Poultry Corporation* v. *Kasruth Association*, 285 N.Y.S 879, 158 Misc. 358 (1936).
94. XX, 8.
95. XVII, 11.
96 XVII, 6, (2).
97. XVII, 3.
98. Facts in letter from Philadelphia park authorities.

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